TELOS

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SECOND SPECIAL ISSUE ON

FEDERALISM

PAUL PICCONE AND GARY ULMEN: RETHINKING FEDERALISM

THOMAS FLEMING: THE FEDERAL PRINCIPLE

THOMAS O. HUEGLIN: FEDERALISM, SUBSIDIARITY AND THE EUROPEAN TRADITION

GUS DIZEREGA: FEDERALISM, SELF-ORGANIZATION AND THE DISSOLUTION OF THE STATE

FREDERICK JOHNSTONE: NEW WORLD DISORDER: FEAR, FREUD AND FEDERALISM

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GIANFRANCO MIGLIO: BEYOND SCHMITT

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CHAD MCCRACKEN: A CHILD'S GARDEN OF TYRANNY

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Re-Thinking Federalism

At the close of the 20th century the "state" as a central political institution is clearly in trouble. Whether it is seen, from the viewpoint of Marxist theory, as a tool of class domination, or with Carl Schmitt, as the highest achievement of European rationalism, its fate seems sealed. Not only has the globalization of economic relations crippled the state's ability to effectively steer national economic life, its growth into a *welfare* state has embroiled it in a myriad of microtasks it cannot possibly carry out effectively. Worse yet, as a rationalizing agency it can only deal with the *formal* dimension of social life — a dimension parasitic on the more fundamental *lebensweltliche* domain which, however, it gradually erodes through its escalating interventions. To the extent that the formal dimension presupposes, as a condition of its own viability, its autonomous *lebensweltliche* counterpart, this colonization systematically undermines that autonomy and, with it, the conditions for the whole social system's reproducibility. In other words, increased state intervention destroys self-regulating mechanisms thus generating dysfunctions, which in turn create a need for further intervention eventually leading to an unmanageable situation of system overload. The state can only intervene so much and in so many places. Even the central state's last remaining supporters, liberal theoreticians, are gradually becoming aware of the crisis of "unaccountability" and "ungovernability," which explains why today practically all political factions call for government downsizing and streamlining. During the Depression, WWII and the Cold War criticism of this pathological predicament has been relatively muted. These crises created a *de facto* state of emergency necessitating the suspension of most criticisms. This is why, with the end of the Cold War and the disappearance of the last totalizing "other," government inefficiency, corruption and waste can no longer be hidden behind the "secrecy" allegedly required by the emergency situation and need not be tolerated, leading to a growing call for radical alternatives. Everyone seems to want

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"change." The new federalism debate seeks to address this predicament.

Ghettoized for decades into the dullest folds of political theory, discussions of federalism have deteriorated to the trivialities of "intergovernmental relations" dealing with how, e.g., federal department X deals with state agency Y in regulating how city bureau Z implements mandate S. The fundamental objectives of federalism, such as local autonomy, cultural particularity and truly democratic governance, have long since been forgotten or at best assumed to have been transcended in the process of state-building and centralization following the "bourgeois" revolution and the institutionalization of a legal positivism according to which the state gradually takes over all social functions and seeks to resolve all problems through legislation. Practically everywhere the nation seems to have displaced the federation.

The Marxist problem of social domination (now redefined beyond an exclusive labor/capital axis and increasingly in *political* terms of New Class privileges) and the Schmittian theme of the exhaustion of the *jus publicum Europaeum* (and, with it, that *nomos* of the earth which regulated international relations up to the 20th century) reappeared as soon as Cold War mobilization no longer imposed questionable administrative practices necessitated by the functional equivalent of a *de facto* state of emergency. The waste and irrationality which obtained for decades within the military-industrial complexes of both the US and the USSR, or the proverbial corruption of, e.g., post-war Italian governments committed at all costs to keeping the country from going communist, can no longer be justified by the need to confront any imminent danger. The resulting legitimation crisis generates a problem of accountability and, *ipso facto*, ungovernability after it becomes clear that hitherto accepted administrative practices need no longer be tolerated. Not only governments do not to work, they are also inaccessible and impervious to major changes. Thus all states today suffer from substantial democracy deficits, which precipitate rationality, motivational and fiscal crises as the state cannot possibly meet all the demands made on it by an increasingly state-dependent citizenry. To the extent that democracy deficits alienate the state from its citizens, the latter no longer identify with it and approach it as an institution to be exploited as much as possible and avoided when it comes to responsibility and obligations. The resulting system overload renders normal governing practices difficult to fund adequately and to pursue effectively.

Liberal-democratic theory (if there is such a thing) cannot deal with this problem. Having ruled out the possibility of any participatory

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democracy (because this is feasible only within relatively small units) and having restricted "democracy" solely to its "representative" version, liberal democracy generates an inevitable communication gap between those representatives who govern (professional politicians) and those they allegedly "represent." *All* politicians become thereby suspect in a context where everyone calls for "change" without having any definitive idea about which *kind* of change. Whatever changes are eventually implemented turn out to be unsatisfactory for the overwhelming majority of the electorate, throwing the entire system in a permanent state of crisis.

Federalism becomes attractive once again to the extent that it can limit the size of basic political units, allowing collective participation and the possibility of confronting the problem of political alienation and democratic legitimation, while at the same time, through the aggregation of units at increasingly broader levels, guaranteeing the smooth interaction of the various units. Something of the kind was originally envisioned when the US government provided for wards or villages being aggregated into cities or towns, themselves subsequently aggregated into counties, then into states and eventually into a broad federation. Historically rationalization has resulted in a centralization of power whereby all lower units have long ceased to be autonomous entities and have turned into mere administrative branches of essentially the same federal government.

Even an advocate of increased federal centralization like John Kincaid has no qualms about describing the present system as "coercive federalism" because the central government's "preemption of state and local powers has reached unprecedented levels since the 1960s."[1] Why has the federal government become so "coercive" *vis-à-vis* states and localities? Because these jurisdictions "embodied the cultural values of the majority of Americans,"[2] which are presumably at odds with liberal principles. On the pretense of defending individual, human and civil rights, the "federal" government now imposes "higher values" and other increasingly fashionable "unfunded mandates" meant to homogenize American society into an

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1. John Kincaid, "The New Coercive Federalism: Places versus Persons," in Franz Gress, Detlef Fechtner and Matthias Hannes eds., *The American Federal System: Federal Balances in Comparative Perspective* (Frankfurt a/M: Peter Lang, 1994), pp. 25 and 45. This paper is part of the proceedings of an international workshop on "The American Federal System: Beyond Cooperative Federalism?" held in Frankfurt am Main, January 7-8, 1994.
2. *Ibid.*, p. 38.

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aggregation of abstract individuals no longer defined territorially but held together at best by an ambiguous Constitution in need of constant reinterpretation by a handful of unelected Supreme Court Justices.[3] The perversion of the original concept of American federalism based on local autonomy could not be more thorough.[4]

Whether "coercive," "cooperative," or "competitive," the present federal

3. According to Kincaid, this has resulted from the fact that "culturally, Americans sought to redefine themselves as a people after the closing of the frontier" *ibid.*, p. 31. While it remains unclear precisely when and how this happened and for what reasons, it is not immediately obvious that Americans have ever indicated any interest in compromising their democratic norms. Surprisingly, Kincaid cites Horace H. Kallen as the theoretician of such a comprehensive identity shift. As Russell Jacoby shows, however, "Kallen, who virtually copyrighted the term 'cultural pluralism,' stated in 1924 that the idea was 'popular nowhere in the United States'." Apparently, "Kallen wanted Judaism to move towards the mainstream, to make it 'secular, humanistic, scientific, conditioned on the industrial economy, without having ceased to be livingly Jewish," i.e., to safeguard cultural particularity at a time when the emerging culture industry threatened to homogenize everyone by means of new tools of mass manipulation such as Hollywood stereotypes. Thus Kallen's objective was precisely the opposite of what Kincaid claims: to safeguard cultural "difference" in a context of increasing homogenization, which is precisely the reason why the US was originally created as a "federation" rather than a European-style "nation-state." See Russell Jacoby, "The Myth of Multiculturalism," in *New Left Review* 208 (November-December 1994), pp. 121 and 126. According to Jacoby, despite the liberal ideology of "cultural diversity," everyone in the US has in fact become the same, without, however, constituting a "people." Today's American identity is defined, first and foremost, by consumerism and the culture industry. As a result, there is an obsessive longing to rediscover something more "real" in often invented identities — those distinctive cultural particularities Kallen sought to safeguard within an industrial society but which have been almost completely obliterated. Americans, however, never decided to redefine themselves exclusively as consumers or abstract individuals. The parallel efforts of liberalism and the culture industry to this effect have succeeded only in precipitating social disintegration. Americanization was never intended to diminish democratic prerogatives. The rise of "coercive federalism" may have less to do with guaranteeing "equal rights" for everyone than with the implementation of a New Class agenda of securing the privileges of middle-class intellectuals running state agencies and bureaucracies at the expense of an increasingly clientized populace.

4. Given this state of affairs, it is not surprising that German critics of American federalism find the present predicament appalling. As Gunter Kisker put it: "To a German student of the American federal system (particularly if he is a lawyer), it is quite a shock to discover that today legal restrictions of the power of the U.S. government *vis-à-vis* the states are almost non-existent. The U.S. Supreme Court . . . cannot discover any reliable legal limits which at least prevent the federal government from intervening with State affairs without the consent of the states concerned. . . . Almost all state powers are open to preemptions and preemptive effects of federal decisions. . . . The federal government seems not to need any more state cooperation if it wants to interfere with state affairs." See Gunter Kisker, "Cooperative - Dual - Competitive Federalism. The Pros and Cons of Model Building: Response to Ellis Katz," in Gress *et al*, eds., *The American Federal System*, *op. cit.*, p. 106.

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system has nothing to do with federalism understood in any of its historical meanings. It is, rather, a figleaf for an inefficient nationalism in need of a decentralized administrative apparatus. Kincaid is once again very candid on the issue when he openly describes the present predicament as a "New Nationalism."[5] Nationalism (understood as loyalty to a particular nation-state comprising a culturally heterogeneous citizenry organized politically according to the same norms and legal regulations) and federalism, however, are antithetical. If a political system relates directly to persons, as the present American "federal" system does, rather than places, then it is "nation" and not a "federation" — an aggregation of politically organized territories.

This is why this issue of *Telos* contains a number of often contradictory discussions of federalism. It is time to clarify what this system entails and to what extent it may provide an answer to the present crisis. Thomas Fleming's account of "The Federal Principle" seeks to reconstruct the fundamental problems federalism was meant to address, within the context of the historical unfolding (or, rather, disintegration) of American federalism. As Fleming indicates, "there may be as many varieties of federalism as there are political theorists," but a simple two-fold division between "top-down" and "bottom-up" federalisms is a good place to start, and the latter is "the only legitimate type." One of his most crucial points, emphasized by other critics as well, is the right to secession. Without it there is no meaningful local sovereignty and the whole system tends to slide towards a nation-state. This is precisely what happened in the US, and helps explain many of the present quandaries.

Another defining feature of federalism is subsidiarity, according to which *only* those functions which cannot more effectively be carried out on a lower level will come under the jurisdiction of the next higher level, which is the principle underlying the 10th Amendment to the US Constitution. From a social-democratic perspective, Thomas O. Hueglin focuses on the abuses of the principle of subsidiarity: first, as a conservative ploy to reverse efforts at fiscal equalization between richer and poorer regions; second, as a self-centered practice of interest-maximizing nation-states in the post-Maastrict European Union. But every principle can be abused. This is hardly sufficient as a critique. Worse yet, he summarily dismisses the principle of subsidiarity on the basis of its origins. Since it is at least in part a Catholic doctrine, it is by definition "reactionary" and inherently

5. Kincaid, *op. cit.*, p. 32.

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opposed to a redefinition of "political community" as a "progressive category." Proof for this is that the feelings of "moderate feminists of a liberal persuasion" may be bruised because the Catholic doctrine advocates "family values" — presumably a code for keeping women in their place. It is amazing that the potential objections of a few vociferous self-righteous ideologues can be uncritically contraposed to one of the more enlightened positions of the Catholic Church, a two thousand-years-old institution which has had a decisive impact in determining the direction of Western civilization. This "politically correct" critique, however, is beside the point, for what is advocated by the subsidiarity principle in the European Union has very little to do with family values. It is a constitutional — federal — principle. In this, as in other respects, Hueglin's article is long on ideology and short on insight.

Hueglin's point is "not that the European Union, along with all other imperfect political organizations, is based on contradictory and often conflicting principles," but that "while the adoption of subsidiarity will do little or nothing to promote the European tradition of solidarity, it will ultimately also undermine the organizational success of the other tradition based on individualized market economy." There may be contradictions between the economic and political goals of the European Union, but they actually obtain between older ideas of federalism and community, as expressed by Althusius (whom Hueglin contraposes to Hobbes in a way that misses the mark) and that very liberalism to which Hueglin subscribes. Althusius' ideas may have something to contribute in re-thinking federalism, but it is liberalism that has outlived its usefulness as a political doctrine and its political rhetoric is at odds with new political alternatives now opening up precisely because of its crisis.

Hueglin is right in pointing out that that critical theorists have only recently began to discuss federalism. This is understandable. Shell-shocked by the Holocaust — an unprecedented barbarity Western civilization was either unable or unwilling to prevent — classical critical theory found it difficult to vindicate local communities and the kind of political organization (federalism) that could safeguard their autonomy, notwithstanding the fact that the dialectic of enlightenment concludes with a defense of particularity, specificity and otherness. After all, the Holocaust itself had been carried out on the pretense of reconstituting an organic (Aryan) community whose particular values were allegedly being homogenized out of existence by "Jewish cosmopolitanism." Similarly, the second generation of communication theorists cleansed all that was

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"critical" in critical theory in the Panglossian effort to deduce the *status quo* from metaphysical presuppositions. Only with the rediscovery of "organic negativity" as an ineradicable characteristic of residual organic communities did it become crucial to prefigure political modes of organization — federalism — able to preserve their particularity and facilitate their growth.

Hueglin is disingenuous, however, in his critique of our characterization of the project of European unification as a "truly pluralist geopolitical alternative" when he writes that "the '*Grossraum*' of post-Maastrict Europe may end up resembling precisely the same dualistic geopolitical space the US is currently constructing," since we make precisely this point. The effort may fail. But that is no argument against the project. Hueglin's condescending attitude betrays his own agenda. He obviously still believes in the worn-out Enlightenment category of "Progress," which secularized the Christian doctrine of redemption without substituting anything for its old eschatological *telos*. Presumably, a "progressive" political community, in terms of long discredited Old Left ideology, refers to a society of culturally homogenized individuals living under conditions of enforced political and economic equality — a euphemism for either heaven, in its original religious meaning, or its earthy otherness, the Gulag.

Hueglin's warning against possible manipulations of projects of refederalization is well taken. But he need not go from there to a recycling of class politics that have never made any sense, chastising Chantal Mouffe for one of the few intelligent claims she has made in the last few years, i.e., that political identity cannot be conceived in terms of social class. Class has never constituted political identity because politics is never reducible to economics alone and no one has ever identified oneself exclusively as an economic agent. It is only social democratic intellectuals who today still buy into all the ideological baggage the old Leninists themselves have long since discarded, assuming that by appending the qualifier "democratic" to their socialism they can avoid all the disastrous implications of the latter. It is no accident that Hueglin ends up concluding that, *nolens volens*, we are stuck with the "really existing" state, which cannot be "decentered" in an all-inclusive "civil" society. This is the Enlightenment ideologist's dream: a world government of culturally "domesticated" (his words) individuals, run by universalizing intellectuals following the mandates of "reason": a rationally depoliticized society of pure souls. This is the dream of systematic depoliticization Schmitt saw at the heart of the liberal project and that very dialectic of enlightenment Horkheimer and

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Adorno indicted as responsible, in its Nazi, Stalinist or "culture industry" guise, for all the catastrophes of the 20th century.

Hueglin closes his account with another standard liberal gambit, by waving the flag of ethno-nationalism to legitimate a "critical associationalism" — a "new and improved" mystification for the old abstract, depoliticizing universalism. While all communities have ways of integrating outsiders as integral parts of the citizenry, they cannot be completely open in the sense that anyone can come in, or it would cease to be a community. This is what has happened in the US, where such openness has gradually led to the obliteration of all local autonomy and cultural particularity, in favor of an oversized nation impossible to run by means of a distant and increasingly unresponsive central ("federal") government. A viable federalism need not entail any xenophobia, parochialism, etc. It must, however, define particular territories as autonomous political entities within which the people living in them determine their own affairs. Such communities must be exclusionary or else they cease to be communities. Citizenship in these communities includes rights and obligations as the privileges of those belonging to them. Federal arrangements facilitate inter-communal relations, but they should not destroy local autonomy by imposing abstract universalism.

Even more than Hueglin, Frederick Johnstone is worried about ethnonationalism and the recent barbarism it has generated in places such as Bosnia and Rwanda. Unlike Hueglin, however, he does not try explicitly to relegitimate the state but seeks to check-mate all the negative features of cultural particularism by means of a liberal federalism predicated on human rights. The problem with such an approach is that, as happened in the US, it threatens cultural particularity and may eventually result in the obliteration of all local autonomy. At any rate, there are no universally valid "human rights." Their claim to universality can only amount to the unwarranted hypostatization of particularistic values above and beyond all others. Ultimately, "human rights" rate no better than any other set of values accepted by any other people for whatever reason. To impose them on communities that do not accept them is nothing more than an act of cultural imperialism. Confronted with the objection, Johnstone throws up his hands and claims that historicity and cultural particularity do not invalidate universality. But can he prove that, in a situation in which universal rights are not actually universally accepted, other than by claiming that he happens to regard these rights as universal? Doing so implies a shift to Thrasymachus' relativism from his initial Socratic universalism.

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True universalism cannot be a matter of metaphysical deduction. It is the result of *de facto* universal acceptance of particular norms. One single dissenter invalidates the claim.

The bottom line is that either human rights are contractual, in which case they can be enforced only on all the parties joining in the contract, or else transcendental, in which case they rate no better than a dogmatic religion and can be imposed only in the same way that the Crusaders sought to convince Moslem "infidels" of the universality of Christianity. When all is said and done, these rights can only apply if there is enough muscle behind them. Ultimately it comes down to Thrasymachus' position anyway, and all the rhetoric about universality is only meant to reassure the enforcers of the sanctity of their way. Johnstone falsely contraposes *human* rights to *group* rights. In fact, it is only a matter of one set of group rights being contraposed to another pretending to be something more, *without any evidence for the alleged superiority or universality.*

Politically there is nothing "individual" about individual and human rights. Along with all values, they are the intersubjective product of historically constituted social groups. Furthermore, Johnstone equates human rights with the rule of law. Is there any *necessary* connection between the two? There can be respect for certain rules of law, e.g., *kadi* law, which have nothing to do with human or individual rights. Similarly, one can conceivably observe human and individual rights while evading taxes, stealing and doing all sorts of other illegal things. A law-abiding society which does not legislate human or individual rights is certainly conceivable and may be even desirable. The most blatant violation of human and individual rights experienced by most people is *crime* against individuals, and to the extent that the liberal ideology of human and individual rights destroys cultural autonomy and community organicity, in the long run it may have the unintended counterproductive consequence of weakening rather than guaranteeing human and individual rights by encouraging social anomie and the resulting criminality. Despite liberal propaganda concerning the barbarity of traditional societies, crime rates in these societies were always extremely low. By and large, because of this state of affairs, people living in these societies could be said to enjoy more individual and human rights than the citizens of Los Angeles or Washington. Historically, Bosnias and Rwandas are relatively rare and often the result of *external* disruptions.

What Johnstone really wants is metaphysical guarantees. Unfortunately, they are nowhere to be found. Only if one's society, community,

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nation or federation happens to have *internalized* certain norms will they by followed. The US Constitution included the Bill of Rights from the very beginning. Yet it took *Brown vs. Kansas Board of Education* to begin to demolish segregation after years of debates had convinced most of the population that segregation was wrong. The declaration of human rights proclaims equality, but only in the 20th century were women allowed to vote in most countries. To empower a central authority such as the UN to enforce human rights only provides the pretense to intervene "legally" when power relations allow it, while offering no guarantee whatsoever when the central authority's club is not big enough or there is not sufficient political will to swing it. Johnstone's own examples are sufficient to refute his claim. His obsession with metaphysical guarantees leads him to the old liberal conundrum of having to hypostatize liberal principles over democracy. Thus all he ends up with is a psychological placebo with no significant political clout.

Gus diZerega begins his article with a clear description of the present situation: "The unitary nation-state is showing increasing signs of declining importance, and the most desirable alternative is not likely to be world government but rather an increasing devolution of power within increasingly federalized states." But then he confuses the meaning of federalism with a number of questionable assertions and a thesis about "self-organization" which makes very little sense, at least with respect to federalism. DiZerega's claim that "the modern nation-state has its roots in undemocratic politics" is ideologically loaded. Of course, historically the state developed with monarchies and aristocracies, but its most rational form grew out of the French Revolution whereby sovereignty and democracy were joined in "popular sovereignty."

In a critique of a recent article in *Telos*, diZerega writes: "The tensions which ultimately brought on the Civil War had less to do with the weaknesses or contradictions within the federal principles underlying the Constitution than with the attempt to unify two different types of society, one of which, the *antebellum* South, developed increasingly in directions fundamentally antithetical to free democratic principles," which diZerega curiously confuses with free market principles. But there is a more fundamental problem here. Federal principles are both political and legal, but they are clearly not *social* principles. Similarly, the Civil War was not fought between two different "societies" — one democratic and the other not. Democracy is not a social but a *political* principle. It is based on "popular sovereignty." It is not true, as diZerega claims, that "only people

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have rights, states have no rights." Fleming is correct: the anti-federalist critics of Madison and Hamilton were the true federalists — they argued for local autonomy and states' rights. Federalism is a constitutional principle for legally organized territorially-grounded political entities which are usually, but not necessarily, contiguous. DiZarega clearly misses the point when he makes the surprising claim that "The foundation of American federalist theory in popular sovereignty rather than on the sovereignty of the states or the nation as a whole marked a major innovation in political thought." The moment "the people" are conceived not as individuals but as "citizens" of their respective states, the notion of "popular sovereignty" takes on a different character.

Not only does diZarega proceed from a distorted understanding of "democratic federalism," his main thesis goes further away from the mark. He writes: "It is ironic that the principles necessary to make theoretical sense of America's federalism were first extensively discussed in the year 1776, not in the New World but in George III's England. Adam Smith's *Wealth of Nations* was the first major study of social self-organizing processes." There is no doubt that "the market is in fact a special instance of a broader process which was transforming societies of Western Europe and North America," and there is also no doubt, as Schmitt observed, that the world economy was undermining the global order of international law and was one of the factors leading to the decline of the state and the *jus publicum Europeaum.* The point, however, was not that politics was giving way to economics but that the economy was becoming political. Political economists like Adam Smith were long on the economy and short on the political.

DiZerega takes the central requirement for democracy and federalism, i.e., the primacy of localism, as his starting point and suggests that it may be time to rethink the shift from the Articles of Confederation to the federalism prefigured by the US Constitution. According to him, "the basic unit of democratic government is the small self-governing town or neighborhood" and "the natural political unit is the city, not the nation." In reaching these desirable conclusions, however, he tries to defend *The Federalist* — a rather questionable *nationalist* political text to be understood in terms of the political differences between the authors of *The Federalist* and the real federalists, i.e., the anti-federalists — as the last word on political theory. Here diZerega confuses the concept of nation and federation and concludes that a federation can deal directly with the people without thereby ceasing to be a federation and becoming a nation.

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Similarly, he proposes a bizarre notion of "the people" understood not as a concrete living polity here and now but as a metaphysical entity extending over time. Sometime he may have to explain how our great-grandsons and daughters can be assembled with our great-great-grandfathers (great-great-grandmothers presumably did not vote) to vote on some particular issue, or how can decisions which have not been ratified by our great-great-grandchildren ever be considered legitimate within such a broad transhistorical concept of "the people."

Unlike Hueglin and Johnstone, Gus diZerega does not see the market as an institution inevitably destined to destroy solidarity and threatening the political fabric. Rather, he proposes such a model as a general framework for political organization. Such a libertarian approach flounders on a number of simplistic assumptions. The myth of self-organization is extremely effective in demolishing authoritarian attempts to define and steer economic relations and has contributed a great deal to the delegitimation and collapse of "really existing socialism." Yet, it presupposes a long list of social relations constituted over time and internalized by the agents operating within the market. Legality, rationality and the quantification of all commodities are historically constituted *nomoi*. The development of market relations at the dawn of the capitalist period was made possible by considerable state intervention guaranteeing the sanctity of contract and free communication.

The vindication of the market as a paradigm for political institutions in general can be done more effectively by pointing out the extent to which functioning within the market necessitates that access to a nomological totality Lukács and most of the Hegelian-Marxist tradition always presupposed as a precondition for concreteness. In making decisions the entrepreneur must take *everything* into account, which means that, to the best of his ability, he must construct a comprehensive picture of a reality within which these decisions make sense. In so doing, all his faculties come into play — not just the formal and instrumental ones. Intuitions, impressions, prejudices and all the rest of those "feelings" operating within the precategorical dimension of being before they turn into consciousness come into play, thus providing a much broader basis from which to make the proper decision. Unlike formal rationality, which operates only within the domain of the concept (thus inevitably relegated to one-sidedness), the entrepreneur's substantial rationality has the advantage of operating at a broader level, guaranteeing a much higher rate of success. This also helps explain why, with corporate (or bureaucratized)

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capitalism the individual entrepreneur's advantage is lost and, as a result, large corporations usually turn out to function as inefficiently as state bureaucracies unless, of course, decisions are highly centralized in the hands of an individual leader who operates in essentially the same way as the individual entrepreneur.

DiZerega is right in stressing how the market best aggregates individual decisions, resulting in a generally more rational outcome than would have otherwise been the case. He may be going overboard, however, when he hypostatizes it to the level of a metaphysical principle and tries to extend his logic to science and liberal democracy. The kind of science he describes and the "scientific method" he ascribes to it are nothing more than that conservative and bureaucratized "normal science" Thomas Kuhn (and even more strongly Paul K. Feyerabend and the rest of the "Left Popperians") described as boring routine having very little impact on real creative scientific work leading to major innovations. The same goes for "liberal democracy." There is nothing self-organizing about the "liberal" part of liberal democracy. The liberal principles are neither subject to democratic review nor justified pragmatically. Rather, they are imposed as dogmatic truths whose "obvious" nature rules out all challenges. Far from being "self-organized," they *organize* social reality in the interest of particular groups holding political power.

The apologetic, conformist character of diZerega's analysis becomes even more obvious when he discusses the welfare state as a necessary outcome of modernization. This is particularly strange today, at a time when it is immediately obvious to almost everyone that, not only it does not work and has serious detrimental consequences on the rest of the social system, but that it is becoming fiscally unsustainable. Why must the state deal with these social problems when it is clear that such a formal redistributive approach not only does not solve the underlying problems but reinforces the conditions responsible for them? Instead, why not think about what has been called a "third sector" concerned with philanthropy, not on a purely formal, bureaucratic level, but in a direct communitarian context where those advantages provided by the market, i.e., access to the *lebensweltliche* dimension, can be deployed and thus address problems of family disintegration, unemployment and lack of education and socialization more comprehensively?

During the past few years, alternatives of this kind have been successfully placed on the Italian national political agenda by the Northern League. Opposed by all parties, however, these proposals have been either

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dogmatically supported or systematically demonized and dismissed without any critical analysis. Thus the constitutional proposals of Gianfranco Miglio — the Northern League's leading theoretician until his recent break — have remained largely unexamined. In special section devoted to his work in this issue of *Telos*, his major ideas receive the kind of close scrutiny they deserve. Unfortunately, the soundness of the constitutional reforms Miglio has suggested do not turn out to be based on a coherent or defensible socio-historical framework. Perhaps, in the long run the new federalism debate will help remedy this situation. In any case, re-thinking federalism is a fitting subject for this the 100th issue of *Telos*. Critical theory has come a long way, but it still has a long way to go.

Paul Piccone and Gary Ulmen

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The Federal Principle

Thomas Fleming

In recent years growing dissatisfaction with the corruption and inefficiency of central governments has led many people to see federalism as the solution to a variety of modern dilemmas. In the US alone, federalism has been offered as the answer to the problems of poverty and welfare, ethnic and religious conflicts, the public school bureaucracy, urban maladministration[1] as well as high taxes and fiscal mismanagement. There is also a society of World Federalists and many similar organizations which identify the federal principle with their comprehensive plans for world government.

The relation of the various American and European federalist proposals to what may be called the classical federalist theories of Althusius, Madison, and Calhoun is not always clear. While there may be as many varieties of federalism as there are political theorists and as many ways of classifying them as there are ideological differences, a simple two-fold division between top-down and bottom-up federalisms may be sufficient as a beginning.

Top-down federalist proposals are plans to reallocate power and resources to lower levels of government and society, where decisions can be made more democratically and money spent more efficiently. While the authors of such proposals may pay lip-service to the notion of states rights or community autonomy, their interest is typically limited to formal arrangements between levels of government.

Bottom-up federalists envision a pyramid of social structures in which power, wealth, and legitimacy all flow from the lowest levels of society (where they are and should be strongest) in a gradual diffusion upward, like sap in a great tree, which flows from the roots (in social terms, families) up through the trunk and branches (neighborhoods, villages, community groups, and regions) and out to the leaves (nation-states, empires, and international

1. Cf. Vincent Ostrum, *The Meaning of American Federalism: Constituting a Self-Governing Society* (San Francisco: Institute for Contemporary Studies, 1991).

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organizations). To pursue the metaphor, the leaves may grow, wither and die in periodic cycles, but the roots and trunks abide from season to season and, like Hardy's "man harrowing clods" and his "maid and her wight," the enduring facts of everyday life "go onward the same/ though Dynasties pass."[2]

To appreciate the difference between these two federalisms — even though bottom-up federalism is the only legitimate type — one has only to consider the main disease for which federalism has been designed as the remedy: the tendency of power to concentrate in the hands of those who have the most to gain by its possession. The "iron law of oligarchy" operates in all societies and in all types of regimes, but the greater the extent of political jurisdiction (and the higher the stakes) the more serious is the centralization of power. Although this problem was discussed by ancient political theorists, it has been developed most fully by classical republicans.

Machiavelli entitles one of the early chapters of his *Discourses*: "A people used to live under a prince, if by some accident becomes free, maintains its liberty with difficulty." The historical point of reference is, of course, the Roman Republic after the expulsion of the Tarquins. Among the difficulties he cites is the fact that, in freeing itself, a people makes an enemy of all the partisans of tyranny who received all their advantages in life from the former ruler; however, a free people cannot make partisans friendly to its own cause. For one thing, he says, in free countries men win honors and rewards on the basis of merit, not as a result of a ruler's favor. Thus no one feels under obligation. In addition: "that shared utility that derives from living in liberty is not appreciated by those who have it: the power of enjoying independently one's own possessions without fear, to be sure of the honor of their women and their children, and to have no fear for themselves; because no one will ever admit to owing an obligation to one who may not injure him."[3]

Machiavelli's insight can be generalized. In free societies the mass of people have a comparatively low degree of attachment to a government whose only function is to see to it that they are not oppressed. On the other

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2. For an example of bottom-up federalism in the US, see Martin Diamond, "What the Framers Meant by Federalism," in R. A. Goldwin, *A Nation of States* (Chicago: 1974), pp. 25-42.

3. Niccolò Machiavelli (I - I1/2) *Discorsi sopra La prima deca di Tito Livio*, a cura di C. Vivanti (Torino: Einaudi, 1983) I.1a , p. 85: "*Quella commune utilità che del vivere libero si trae, non é da alcuno, mentre che ella si possiede conisciuta: la quale e di potere godere liberamente le cose sue sanza alcuno sospettono, non dubitare dell'onore delle donne, di quel d' figliuoli, non temere di sé; perché nessuno confesserà mai avere obligo con uno che non l'offenda.*"

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hand, some real or would-be aristocrats are willing to devote a good deal of their energy to acquiring wealth and power. The problem is more or less the same for all republics: how to prevent rich and influential minorities from carrying out their schemes to appropriate society's wealth and privileges. As John Adams put it, in a summary statement of his political creed, "[D]espotism, or unlimited sovereignty, or absolute power, is the same in the majority of a popular assembly, an aristocratical council, an oligarchical junto, and a single emperor."[4]

The cartelization of wealth and privilege is not confined to republics and democracies, although in a monarchy the problem of power is relatively simple: how to keep the king and his retainers from abusing their authority. In a republican or quasi-democratic form of government, the problem is more complicated. Why? In a monarchy, the king considers the nation his patrimony and a ruler with any intelligence will do his best not to damage what is his. Furthermore, if people consider the political apparatus as belonging to someone else, they know they have to take steps to protect themselves from the rulers. In a so-called democracy, however, the people are under the delusion that the nation and the government belong to them and are therefore tempted to do what they like with it. In exercising their power, kings are constrained by custom and tradition; democracies are theoretically free to do whatever they like because of the principle of popular sovereignty and majority rule.

This danger was recognized in the early days of the American republic by James Fenimore Cooper, who feared that in the pursuit of "popular rights" American democrats were putting individual liberty, including even property rights, in jeopardy: "Numbers. . . may oppress as well as one or a few, and when such oppression occurs, it is usually of the worst character. The habit of seeing the publick rule is gradually accustoming the American mind to an interference with private rights that is slowly undermining the American character."[5] In Cooper's day, there was little people could do to interfere with property rights. With the introduction of the income tax, ambitious politicians could use revenues to buy votes. Instead of having to use their own money or the assets of the party machine to buy legislators, they could now tax the more prosperous and spend the revenue on projects appealing to various groups of voters. This is precisely the "new corruption"

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4. Letter to Thomas Jefferson, 13 Nov 1811, in *The Works of John Adams . . .*, edited by Charles Francis Adams (Boston: 1850-56) Vol. X, p. 174.

5. James Fenimore Cooper *The American Democrat* (New York, 1931, repr. Liberty Press, 1981), p. 231.

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prophesied by Sir Henry Sumner Maine, W. H. Lecky and other anti-democratic Whigs in the late 19th century.[6] But the situation was even more serious than anything Maine or Lecky imagined, because in buying votes political leaders are compelled to grant monopolies and privileges to every interested group: manufacturers and labor unions, polluters and environmentalists, welfare dependents and welfare reformers. While citizens are occasionally outraged at the benefits received by other groups, no one is willing to jeopardize his own benefits.

What is commonly called "gridlock" in Washington, is only the manifestation of one aspect of this problem. Neither major party can afford to abandon its positions on health care, crime, welfare reform, etc., because in so doing it would alienate the very lobbies that have funded its campaigns. This phenomenon — a parasitic growth of government in response to particularistic demands that cripple a nation's productive and creative output — has been rightly called the "logic of collective action" according to which "[T]hose groups that have access to selective incentives will be more likely to act collectively to obtain collective goods than those that do not and smaller groups will have a greater likelihood of engaging in collective action than larger ones."[7] From a broader perspective, this is a corollary to Machiavelli's observation on the difficulty of maintaining a free republic. Franklin's description of the government established by the Constitution — "a republic, if you can keep it" — was a true admission of the difficulty the Founding Fathers confronted.

The device most frequently proposed as a remedy for the concentration of power is Montesquieu's division of the general power into branches (executive, legislative, and judicial) on the assumption that competition between the branches will prevent any one of them from exercising a tyranny.[8] But unless the officers of these three branches come from distinct social classes and do not intermarry, there is little to prevent them from forming a cartel and ruling as they see fit.[9] Consider the careers of a few

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6. See Henry Sumner Maine (in *Popular Government*), also, W. H. Lecky (in *Democracy and Equality*).

7. M. Olson, *The Rise and Decline of Nations: Economic Growth, Stagflation, and Social Rigidities* (New Haven: Yale University Press, 1982), p. 34; cf. *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1965).

8. *L'Esprit des Lois* VII.16.

9. Near the end of the Roman Republic, a power struggle between the senatorial class and the commercial class resulted in the law courts being reserved to the equestrian order, but in the end it was Cicero's policy of *concordia ordinum* — the conspiracy of the rich, i.e., the equites, and the powerful, i.e., the senatores — that prevailed. Cf. E. Badian, *Roman Imperialism in the Late Republic* (Ithaca, NY: Cornell University Press, 1968) 50 ff. and 62 ff.

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prominent people, such as the "liberal" Democrat Robert McNamara (CEO of Ford Motor Company, Secretary of Defense under Lyndon Johnson, President of the World Bank) who has sat on the boards of major foundations and corporations, including the *Washington Post*. Similarly, the "conservative" Republican Richard Allen has alternated between positions in government and stints as lobbyist for foreign governments and holds a senior post at the Heritage Foundation. Virtually every US trade representative has served as a lobbyist for foreign business interests, while the so-called revolving door is a guarantee that regulations are written and enforced by the very people that were the object of the regulations There is only one elite class, the comparatively small group who manage the corporations, staff the bureaucracy, and control cultural institutions — including the media. What competition there is between Republicans and Democrats, Liberals and Conservatives, is only a jockeying for power within a club which, while it is open to new members, has no intention of sharing power with outsiders.

Consider also the record of the judicial branch. The US Supreme Court was never intended as an ultimate authority. In constitutional questions, its power was supposed to be largely advisory. According to the authors of *The Federalist*, the Congress held the threat of impeachment as insurance against the Court's misbehavior. The early critics of the Constitution regarded the Court as a potential threat to republican government. A New York pamphleteer[10] feared that too few restrictions had been placed on the Court and that, under the principle of equity, "they will give the sense of every article in the Constitution that may from time to time come before them. And in their decisions they will not confine themselves to any fixed or established rules, but will determine according to what appears to them, the reason and spirit of the Constitution."[11] Hamilton answered, more than a little disingenuously, that "there is not a syllable in the plan. . . which *directly* empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect, than may be claimed by the courts of every state" and pointed out that the power of impeachment would alone

10. "Brutus" IX in *The Debate on the Constitution*, ed. Bernard Bailyn (New York 1993), pp. 40-46. I have cited from this Library of America edition wherever possible, as the most instructive compendium of texts. The standard edition is H. J. Storing, *The Complete Anti-Federalist* (Chicago: University of Chicago Press, 1985) II, 9, 130 ff.

11. *Debate* II, p. 132.

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give "complete security."[12]

As Hamilton probably foresaw, impeachment turned out to be an unwieldy tool. In 1820 Thomas Jefferson, who had feared the Court from the beginning and did his best to impeach a justice, described the federal judiciary as "the subtle core of sappers and miners constantly working under ground to undermine the foundations of our confederated fabric. They are construing our constitution from a coordination of a general and special government to a general and supreme one alone."[13] The problem was, that while intending to set up three equal branches, the Constitution had given the judicial branch "the right to prescribe rules for the government of the others," and (to compound the felony) this power had been given to the unelected branch. Impeachment, he commented in the same letter "is not even a scarecrow" and the Constitution was becoming "a mere thing of wax in the hands of the judiciary."[14]

Nonetheless, for all the growth in the power of the national judiciary, there were presidents, such as Jackson and Lincoln, who stood up to the Supreme Court when it got in the way of their ambitions. Yet such contests between the branches — including the Watergate episode of the 1970s — are all too rare, and the Supreme Court has been able to increase its powers steadily by cooperating rather than fighting with Congress. By the 1960s, the Court was able to intrude into every nook and cranny of American life. The device used in recent times has been a selective reinterpretation of the 14th amendment (selective because the incorporation doctrine is never applied to the 2nd Amendment), but on other occasions, the interstate commerce clause has provided the justification.[15] The court's usurpations were one source of the Southern states' growing hostility to the Union, and it is significant that the Confederate Constitution explicitly repudiated

12. See *Federalist* LXXXI. Among others, Mercy Otis Warren (whose brother, James Otis, had sparked the colonists' resistance to the British Admiralty's invasion of property rights), was unhappy with the appellate provision which would force poor men to travel great distances to trial, a hardship she regarded as "an unwarrantable stretch of power over the liberty, life, and property of the subject through the wide continent of America." See *Debate* II, pp. 292-3; Cf. G. Mason in VA convention, *Debate* II, p. 723. Maryland ratified the Constitution with a number of stipulations, including "That the supreme federal court shall not admit of fictions, to extend its jurisdiction." See *Debate II*, p. 555. New York included a similar provision, restricting the authority of the Supreme Court in questions of land to disputes between states or between citizens of different states. See *Debate* II, p. 545.

13. Letter to Thomas Ritchie, 25 Dec. 1820.

14. *Ibid.*

15. For a frank appraisal of the Supreme Court's usurpation by a political liberal, see Raoul Berger, *Federalism, The Founders' Design* (Norman, OK, 1987).

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Marshall's dicta of judicial supremacy.[16]

Dividing the powers of the state does not even begin to address one of the chief problems of democracy: the tyranny of the majority. Carried to extremes, the principle of majority rule might justify the persecution of blonds by brunettes, the beautiful by the plain, the intelligent by the stupid; indeed, that is how the principle of equality works in American society. More typically it is religious and ethnic minorities that are attacked. "Let it never be forgotten," said John C. Calhoun in his Fort Hill Address, "that where the majority rules the minority is the subject."[17]

One proposed solution has been proceduralism, i.e., passing laws and erecting institutions guaranteeing individual rights. In America, the panoply of constitutional guarantees include the Bill of Rights, as interpreted by the federal courts and enforced by federal marshals. In practice, this has meant the aggrandizement of the central government at the expense of all local jurisdictions, the suspension of every traditional legal right including double jeopardy (waived in cases where minority rights are involved), trial by jury (virtually non-existent in the administrative law used by the Federal bureaucracy), the right of wives not to testify against husbands (invalid in child abuse cases), the right to dispose of private property (undermined both by open housing and environmental legislation), to say nothing of the freedoms of press (a business monopoly), speech (challenged by hate-crimes statutes), and religion (persecuted by the Federal courts on the fictitious grounds of a "wall of separation") guaranteed in the first amendment.

The Founding Fathers were very skeptical on the subject of human nature. They regarded their own handiwork as a dike against the flood of tyranny and servitude that periodically engulfed every attempt at liberty. The framers had been persuaded by Montesquieu that republican government could not be exercised in large nations, and they accepted Montesquieu's solution to the dilemma, which lay in the experiences of ancient confederacies, such as the Achaean League, and more modern associations of states, such as Switzerland and the Holy Roman Empire.[18] They were well aware of the tendency of confederations to break down into

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16. M. L. DeRosa, *The Confederate Constitution of 1861: An Inquiry into American Constitutionalism* (Columbia, MO: University of Missouri, 1991), p. 112.

17. Recently republished in Ross M. Lence, ed., *Union and Liberty: The Political Philosophy of John C. Calhoun* (Indianapolis: Liberty Press, 1992), pp. 367- 400.

18. "Observations on the Reconstruction of Government in Massachusetts during the Revolution" in *Works* IX, p. 1-3.

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warring provinces or factions,[19] and both Hamilton and Madison spent much of their time at the Convention arguing for a sufficiently strong central government as a safeguard against dissolution. The trick would be to balance the need for national order with the recognition that a continental state would quickly degenerate into an authoritarian empire. The solution to the dilemma could not come from any adjustment of the powers of the national branches of government but from a division of power between national and state governments. The answer, in a word, was federalism.

The government set up by the Constitution represented a compromise between those who advocated a unified nation and those who wished to retain the weak existing confederacy. A federal arrangement represented no innovation, since the United States had always been a confederation, and as early as 1775 John Adams had argued that the authority of any "continental" government should be limited to "war, trade, disputes between colony and colony, the post office, and the unappropriated lands of the crown. . . ."[20] Adams' list set the limits, more or less, of the regime, and the new government was made supreme in foreign affairs and defense, and the ultimate arbiter of quarrels between the states; it established a post office and even assumed control over the western lands. In virtually all else, the states were sovereign and had far greater autonomy than the current members of the European Community.

To realize how sovereign the states really were, it is sufficient to look at Hamilton's and Madison's works defending a strong central government. According to the authors of *The Federalist*, the Constitution was constructed on the principle of state sovereignty. "The equal vote allowed to each state [as represented in the Senate] is at once a constitutional recognition of the portion of sovereignty remaining in the individual states, and an instrument for preserving that residual sovereignty."[21] The new national government would raise taxes, but it could never use this power as a pretext for interfering in the states' internal affairs. In fact, Hamilton argued that the state militias would be used to resist any such interference.[22] If one state was not strong enough to resist the central government, some states would band together,[23] which is precisely what happened at the end of 1860. Even

19. See John Adams, *A Defense of the Constitution of Government of the United State of America* in *Works*, Vol. IV 498 ff..
20. "Thoughts on Government" in *Works* IV, p. 200.
21. Hamilton, in LXII.
22. Hamilton in XXVIII.
23. Madison (in XLVI).

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John Marshall, the greatest enemy of federalism in the early days of the republic, ruled time after time in favor of states rights (e.g., in Barron v. Baltimore) and declared that "no political dreamer was ever wild enough to think of breaking down the lines which separate the states, and of compounding the American people into one common mass."[24] The only Federalist Party President, John Adams, insisted that he had never differed from Jefferson on constitutional questions, and he wrote to the arch-republican John Taylor that from the beginning he had considered Congress not as a representative body but as a "diplomatic body, a collection of ambassadors from thirteen sovereign states," adding that never "in any moment of my life, did I ever approve of a consolidated government."[25]

It is one of the ironies of history that the Federalist Party of Hamilton and Adams was the party of strong national government, and that their opponents were known first as anti-federalists and later as the democratic republican party of Thomas Jefferson. Of course, the anti-federalists were the true federalists. They opposed the Constitution because they thought it took too much away from the states and did not sufficiently limit the powers of the national government.

Many of the anti-federalist arguments directly confronted the question of power in a republic. James Winthrop of Massachusetts warned against "a universal disposition to use power wantonly," and insisted "it is therefore as necessary to defend an individual against the majority in a republic as against the king in a monarchy."[26]

Many of the arguments turned on the question of states rights, but not as an abstract doctrine or out of reverence to the old colonies. The states were small enough, it was argued, for people to have some influence over their governments, although Patrick Henry thought even Virginia so large that it rendered the administration of justice problematic. For Henry, the whole question of the Constitution "turns. . . on that poor little thing — that expression, 'we the people,' instead of the states of America."[27] Many anti-federalists realized that no government could be made up of isolated individuals, since it was the sense of the little communities that had to be represented.[28]

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24. (in McCulloch v. Maryland).
25. Letter to John Taylor, 12 April 1824 in *Works* vol. x, p. 413.
26. "Agrippa" XVIII, *Debate* II, pp. 155-62.
27. Speech at Virginia Ratifying Convention, (4 June 1788), *Debate* II, pp. 595-97. This is also Schmitt's and Seydel's main objection. See *Telos* 91, Schmitt's article on "The Theory of Federalism."
28. Timothy Ford, "Americanus" in Hyneman and Lutz, *American Political Writing During the Founding Era*, (Indianapolis, 1983), II, pp. 900-35.

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Col. George Mason of Virginia was troubled by the apparent power of the federal judiciary to override state courts, and although he was answered both by the future Chief Justice John Marshall and by a better jurist, Judge Iredell of North Carolina, Mason's fears proved justified. Mason understood that the consequences of making the Court the supreme arbiter of justice went beyond the judicial branch: "For if your state judiciaries are not to be trusted with the administration of common justice, and decision of disputes respecting property between man and man, much less ought the state governments to be trusted with the power of legislation."[29] Mason was also troubled by the framers' failure to incorporate the common law into the Constitution — as if they were setting aside all the liberties over which their English ancestors had fought.

A similar point was made by a delegate to South Carolina's ratifying convention. The men of his parish had fought and suffered in the war, said Patrick Dollard, and they esteemed the virtues of the delegates to the Constitutional Convention and were not opposed to vesting Congress with more ample powers "but to make over to them or any set of men their birthright comprised in Magna Charta, which this new constitution absolutely does, they can never agree."[30]

These sentiments were widespread, and the Constitution's defenders did not disagree with the premises; rather, they insisted that the Constitution would not interfere with the states. The new government would not have the power to interfere with the basic liberties demanded by the supporters of a Bill of Rights. According to Hugh Williamson of North Carolina, "The liberty of the press and the laws of Mahomet are equally affected by it."[31]As for the rights of religions other than Islam, freedom of religion, argued Madison in the Virginia convention, was secured by the multiplicity of sects and the temper of the people. "There is not a shadow of right in the General Government to intermeddle with religion."[32] John Dickinson thought the rights of the states were secured in making the states "sovereign and supreme in all matters that relate to each state only."[33]

There was no need to include the Common Law in the Constitution, it

29. Speech at Virginia Convention, 19 June 1788, *Debate* II, p. 720-29.
30. *Debate*, 592-94. The "federal farmer" (perhaps the most influential anti-federalist pamphleteer) insisted that rights guaranteed in Magna Charta were not abstract, paper rights but "the result of repeated negociations and declarations." Storing, II, 8, p. 196.
31. *Debate* II, p. 227.
32. *Debate* II 691.
33. *Debate* II 412.

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was said, because all the Common Law protections were already incorporated into state constitutions. Besides, as one Massachusetts Federalist (Theodore Sedgewick) wrote, a Bill of Rights would actually give the national government "a right of interference which would naturally tend to check, circumscribe and finally annihilate all state power."[34] Nonetheless, many states ratified the Constitution with the stipulation that a Bill of Rights would be passed, and perhaps the chief concern was for what would become the 10th amendment, which spells out plainly that all rights not explicitly granted in the Constitution are reserved to the states and to the people.

Since the 1780s, the history of American politics has been a struggle between those who viewed the Constitution as the terms of agreement that brought these states into a union and those who regarded it as a mystical poetic text that could be interpreted in any way suiting the convenience of the moment. On one side stood Hamilton and Henry Clay, Abraham Lincoln and the two Roosevelts; on the other, opposing every invasion of state and local authority, stood Jefferson and Calhoun, Stephen Douglas and Sam Ervin (who fought against federally forced integration and against President Nixon's Omnibus Crime bill).[35]

Down to the 1860s, the US government was limited to affairs of state, national defense, tariffs, and inter-state disputes. In all else the states were sovereign, but very little of that sovereign power was actually exercised. As Tocqueville pointed out, the state governments did comparatively little. Most problems were settled within townships or parishes: "The townships are only subordinate to the state in those interests which I shall term social, as they are common to all the citizens. They are independent in all that concerns themselves."[36]

The most systematic vision of federalism belonged to Thomas Jefferson, who late in life drew up a plan for public schooling in Virginia. The point of this plan is usually missed. Far from being a program of government schooling imposed from the state capital, Jefferson's plan was for a pyramid of neighborhoods, townships, and counties, each self-governing at its level of authority. Later he elaborated this concept into a plan of ward or

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34. Cf. M. E. Bradford, *Against the Barbarians* (Columbia, MO: University of Missouri Press, 1992), pp. 198-205.

35. Ervin, if he were alive and in the Senate today, would have led the fight against the Clinton administration's federal crime bill, on the obvious grounds that the Constitution has no purview in the administration of local criminal justice. On similar grounds he opposed the Equal Rights Amendment, and, one must assume, he would now be opposing a Right to Life amendment.

36. Tocqueville *Democracy in America,* I.4

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neighborhood government "to impart to these wards those portions of self-government for which they are best qualified, by confiding to them the care of their poor, their roads, police, elections, the nomination of jurors, administration of justice in small cases, elementary exercises of militia; in short, to have made them little republics. . . for all those concerns which, being under their eye, they would better manage than the larger republics of the country or State."[37]

Here, then, is the true principle of the American system, not the right of a majority to oppress the minority, nor even the right of every man collectively to interfere in the lives of his fellow citizens, but the right of every real community — family, neighborhood, parish, town, county, and state — to mind its own affairs. This is federalism from the ground up, as Cooper realized when he distinguished the American system from previous federal plans: "As it was the general and ancient rule that liberty existed as a concession from authority; whereas here we find authority existing as a concession from the ruled."[38] Far from being a mere political device employed to increase the efficiency of government, the federal principle is an aspect of the natural law which has, for human beings, the same force as such other natural laws as the principle of gravity and the law of thermodynamics.

The federal principle is natural because it is rooted in human nature. In Hamilton's words: It is a "known fact in human nature, that its affections are commonly weak in proportion to the distance or diffusiveness of the object."[39]Strongest within the family, these affections gradually weaken as they radiate outward and upward to the states and the union. By nature, human beings are not dissociated individuals. If they were the race would have perished in the generation of Adam and Eve, maintaining separate residences. Man is a sexually reproducing species in which each sex has been designed to fulfill specific functions and whose offspring require prolonged care and education. The social expression of human nature is the enduring union of male and female in a household where children are reared. The natural division of labor within the household means that no individual within it can stand as an independent entity. The household or kin-group is the social unit, not the individual, whose very existence is a theoretical construct.[40]

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37. Letter to Joseph C. Cabell, 2 February 1816.
38. *The American Democrat*, 14.
39. *Federalist* XVII.
40. For detailed argument and evidence, see the author's *The Politics of Human Nature* (New Brunswick NJ: Transaction, 1988).

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Territory

Political powers are traditionally defined in terms of kinship (real of fictive) or territory, and while other bases may be sought in religion, as in church hierarchies, or economics (as in the case of transnational corporations), jurisdiction over territory is close to begin an indispensable element both of political authority in general and of federal systems in particular. Even exclusively kin-based societies, such as the nomadic bushmen of the Kalahari, maintain something like territorial rights over watering holes, and the failure to preserve such privileged access might mean the extinction of the band. While there an infinite number of non-territorial arrangements might be devised by the clever theorist, it is a fact of real-world situations that control over the house and home-stead is the only secure foundation of a family's ability preserve its integrity, hence the American Constitutions' Fourth Amendment, whose provisions may be traced back to the Common Law doctrine that an Englishman's home is his castle. Similarly, it is the characteristic of free cities and towns that within their own territory they are immune to invasion from royal or imperial troops. Italian communes paid huge sums to the German emperors for such immunities. At higher levels of political organizations the sovereignty of American states depended in part on the territorial control exercised by state governments with the power to prevent any lower level of political association from defending itself against a higher and reduce the federal principle to mere rhetoric, like the Jacobin Declarations of the Rights of Man which in principle proclaimed the right of property without preventing the wholesale confiscation of property.

As a political theory, the federal principle may be traced back to Aristotle, who demonstrated that the state, i.e., the city-state, was the result of a social evolution that began when men and women married and created a family, and as those families joined together into a village, those villages coalesced into a city. Aristotle did not conceive of any larger political unit, because in the experience of the Greeks and of the whole Mediterranean world, such large-scale polities were inevitably empires that invaded and undermined the lower levels of sovereignty. If one of his students had suggested confederation as a possible mechanism for constructing a just polity, the master would have pointed out that the Athenians had twice created an empire which they called a "league."

However, the federal principle is no respecter of government types, and monarchies, oligarchies, and empires have all — to the extent they are successful — testified to the efficacy of federalism. The federal principle may be clearly traced in the decentralized tribal organization described in the

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Pentateuch in the acephalous segmentary societies of many pre-colonial African peoples,[41] and in the articulation of most ancient Greek communities into tribe, phratry, clan, household, and, perhaps, above all in feudal Europe. In the European examples, state-building monarchies were all-too-successful in subordinating all lower levels of social organization to the crown (here the Tudors and their successors were even more successful than the Bourbons, although they were forced to share power with a parliamentary oligarchy) yet, on the eve of the French Revolution, Burke described the *ancien regime* not as a decentralized structure but as a system that still displayed vestiges of traditional checks and balances: "In your old states you possessed that variety of parts corresponding with the various descriptions of which your community was happily composed; you had all that combination and all that opposition of interests. you had that action and counteraction, which in the natural and in the political world, from the reciprocal struggle of discordant powers draws out the harmony of the universe."[42]

In a letter to Jefferson, John Adams employed similar language in describing "the complicated piece of machinery" that is free government,[43] and while federalist theory is primarily concerned with the vertical pyramid that rises up from the household to the national state, both Burke and Adams were also concerned with horizontal relations between the parts. In part this is the question of "cross-cutting" ties, such as religious sects, secret societies, and trade associations, which in binding individuals together on a basis other than clan kinship or local community establish connections between sections of society which might otherwise be in conflict.[44]

The sectional divisions within American churches in the mid-19th century were an ominous sign that such cross-cutting associations were no longer functioning properly. In the same letter, Adams expressed his fear that some scoundrel like Burr or Hamilton would exploit the sectional argument over the extension of slavery into the territories as a means of breaking up the union.[45] To Jefferson, the Missouri controversy seemed like a fire bell in the night, and while states rights theory might, in principle, settle such questions on something like Stephen Douglas' principle of squatter sovereignty, disputes over slavery tested the Constitution and found it wanting.

41. See E. E. Evans-Pritchard, *The Nuer* (Oxford: Oxford University Press, 1940).
42. *Reflections on the Revolution in France* [1790] in *Select Works* E. J. Payne, ed. (Oxford: Clarendon Press, 1898) Vol. 2, p.41..
43. Letter to Jefferson, 18 Dec 1819, in *Works* X, pp. 385-87.
44. Cf. Max Gluckman, *Custom and Conflict in Africa* (Oxford, 1956), who develops an idea put forward by T. S. Eliot in *Notes Toward the Definition of Culture*.
45. Letter to Jefferson, 18 December 1819, *op. cit.*

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What triumphed over constitutional federalism was the principle of majority rule, but the debate over slavery elicited the most important American contribution to political theory, namely Calhoun's principle of concurrent majorities. Calhoun arrived at his principle not through a process of speculation but by generalizing experience. His own state, South Carolina, was divided culturally and economically into two distinct sections: the Anglican Low Country with its wealthy rice plantations worked by enormous numbers of slaves and the already old city of Charleston, and the Scotch-Irish Up Country of bustling farms and frontier settlements. South Carolina had once been a contest between Charleston money and Up Country voting strength, but a new constitution gave each section the ability to protect its own interests by vetoing legislation. Calhoun extended the reasoning to the entire United States and, indeed, to the world. To defend themselves against the tyranny of majorities, communities — such as the American states — should have (and so Calhoun believed, did have) the right to nullify (not his word) hostile laws imposed by the general government. Calhoun did not believe that his principle was an innovation; on the contrary, he regarded it as a restatement of the doctrine contained in the Virginia and Kentucky resolves drafted by Madison and Jefferson.[46]

The nullification principle is a step, short of secession, that allows states or other minorities to defend themselves against oppression, and the principle can be expanded to include such political arrangements as single-member districts for school boards, guaranteed seats for minorities and other representational quotas, as Lani Guinier has argued, much to the astonishment of conservative republicans who dubbed her the "quota queen." The purpose of such devices is not minority "empowerment" but community protection. The conclusion seems inescapable — that a merely vertical structure of federalism cannot provide sufficient guarantees of minority rights against the will of a majority, even where such rights are specified by a constitution. A healthy federal structure is cemented together both by cross-cutting interests and associations and by explicit recognition of something like Calhoun's principle of concurrent majorities. In fact, the overlapping jurisdictions created by the power dialogue between pope and emperor in the later Middle Ages partly fulfilled this requirement.

It is a well-known principle of economics that creativity and initiative cannot be imposed by central planners, if only because of the limitations

46. Cf. passages in Clyde N. Wilson, ed., *The Essential Calhoun*, (New Brunswick, NJ, 1992), pp. 1-50, pp. 273-302, pp. 369-418.

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on the information available. The same principle is at work throughout society. Each society develops along its own lines, and the political arrangements of medieval Europe were, broadly speaking, based on a principle of power diffused by means of personal bonds between liege and man.[47] The highest expression of this system was, in principle, the Empire, and it is no accident that the most thorough-going theorist of federalism was Johannes Althaus, "Althusius," a German Calvinist lawyer who wanted to provide a theoretical justification for the intricate but decentralized structure of the Holy Roman Empire. Like Aristotle, Althusius roots his system in the natural relation between the sexes.[48] So much one might have learned from Aristotle or Thomas, but the unique part of Althusius' theory is that he makes each level depend, for its legitimacy and authority, on the lower levels, so that if an emperor dies, his substitute is picked by the electors, and if a duke dies without a clear heir, his successor is chosen not by the people but by the next lower level of barons, and so on. At the lowest level of political order, the city, the members of the community are not the individual inhabitants but the families and associations (*collegia*) which have banded together. For Althusius, sovereignty (or to use his language the "*ius regni*") does not derive from individuals but from the whole, the *universitas* of the members, which are not individuals or even families and associations but the cities, provinces and regions that have established community.[49]

Like all true federalisms, the Althusian system goes from bottom to top. What is mostly called federalism today is quite the reverse. In the US, the so-called new federalism usually means that the national government would lend back some of its power to the states, largely in the name of efficiency and lower taxes. When the really difficult questions of civil rights, crime, and state authority over militia are posed, the new federalists generally throw up their hands and say the national government ought to guarantee

47. This interpretation obviously goes back to Otto von Giercke.

48. *Politica Methodice Digesta of Johnannes Althusius* (Althaus) repr. of IIIrd ed. 1614 with introduction by C. J. Friedrich (Cambridge: Harvard University Press, 1932), now reprinted (New York: Arno, 1979). For translations, cf. *The Politics of Johannes Althusius* abridged and tr. by F. S. Carney (Boston: Beacon Press, 1964), p. 23: "The private and natural symbiotic association is one in which married persons, blood relations, and in-laws in response to a natural affection and necessity, agree to a definite communication among themselves." "*Privata naturalis consociatio symbiotica est qua naturali affectione & necessitate postulante, conjuges, consanguiniei & adfines in simbiosin, & communionem quandam in se consentiunt.*" [*Politica* II.14] .

49. IX.1-5.

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civil rights and public safety.[50]

In Europe, federalism is often confused with world federalism, which in one form or another means the surrender of national sovereignty to some international body like the EC or the UN. In theory, there is nothing objectionable to the creation of a supranational body, so long as the whole structure is based on federalist principles. But this is not the case. Even the puny EC regulates the slightest minutiae of economic life within France, Britain, and Italy, just as NAFTA will supersede US state and local regulations. A true federal union of European or American states would not require even a *Zollverein*, because such matters are properly within the jurisdiction of nation-states, and it certainly should not include the intrusions into national and local economies now practiced under the EC. Historical farm cultures, local products, regional and national pride all must give way to international order: among the casualties are English apples, Italian vegetables, and — potentially — German beer. This sort of federalism is a Roman imperial wolf camouflaged as a republican sheep.

There are very simple tests to determine whether or not a political program or party is genuinely federalist. First, does it bring the power to make decisions down to the level of the people who are affected by them? Neighborhood schools should be run by the neighbors and not by national, state or even city governments. Such "empowerment" plans as vouchers and school choice, by giving the Federal government that authority to decide on the eligibility of private and religious schools, actually give the national government more power over education than it currently enjoys. The European experience of such plans, which tend to induce non-government schools to conform to government standards, are a good indication of the potential effects of school choice on American neighborhoods and families.[51]

Second, is the program designed as a gift from a higher authority which simply returns money it has already collected (this is generally what is meant now in the US) or does it give actual power, including taxing authority, back to the states and local communities? In the case of schools,

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50. Despite the arguments of black welfare reformers, e.g., Joan Davis Ratteray, "Public and Private Choices for African-American Parents" in David Boaz, ed., *Liberating Schools,* (Washington 1991), that conservatives would "leave open the possibility of resegregation, most conservative (e.g. Stuart Butler) and libertarian (David Boaz, *op. cit.*) advocates of school choice and welfare reform are staunch advocates of federally enforced civil rights. Cf. Stuart Butler and Anna Kondratas, *Out of the Poverty Trap: A Conservative Strategy for Welfare Reform* (New York, 1987).

51. Cf. Charles Glenn *Choice of Schools in Six Nations*, (Washington, DC: US Department of Education, 1989).

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revenue sharing still keeps the national government in the saddle.

Third, is the federal principle being carried out regardless of other political prejudices? This is the cutting edge: What will a federalist right-to-lifer have to say about a life amendment? If he is a true federalist, he is against it, because these matters are state concerns. What is the response of conservative nationalists, if they adhere to federalist principles, when liberal governors attempt to block the transportation of nuclear waste through their states or withhold units from military exercises designed to intimidate Communist countries? The simple answer is state rights. What will a libertarian federalist say about the use of federal courts to overturn local zoning or censorship regulations? He will say that the local community has the right to make its own rules, and if he does not like them, he can find a community more to his taste. In no case will he summon the assistance of the national courts.

The big question in the US always comes to a rights issue. What does a federalist say to a local school system that wants to teach the dominant local religion, eliminate girls basketball, or prohibit racial minorities. The federalist will answer, with Sam Ervin, that "the Constitution of the US gives every man the right to make a damn fool of himself." If a neighborhood is 95% Muslim, why should they not require the teaching of Islam and the wearing of the chador? Why can white separatist evangelicals or black Muslims not set up their own neighborhood schools for their own children? All they need to do is to define a community and raise taxes. If the 5 or 10% minority does not like it, let them attach themselves to another community, move, or secede. Mixed neighborhoods would obviously proceed by consensus of the largest groups in the area, and if one or two groups imposed a petty tyranny, they would risk the defection of the groups they are persecuting.

It is important to note that real communities are not simply administrative divisions, nor is there one simple criterion for determining the existence or boundaries of a community. At one end of the spectrum are villages in which most of the inhabitants can claim kinship with each other; at the other are ethnically mixed neighborhoods (or even apartment buildings) in which a sufficiently large number of the residents share a common commitment to the safety, cleanliness, and order of the community. Since communities are organic, their composition (and their vitality) changes over time. A church parish may be founded by Irish Catholics, taken over by Poles, and find itself in the 1990s dominated by Hispanics. Such transitions are not without suffering or conflict, but if communities cannot sort out their differences there is probably no higher authority that can. Of course, the state or federal governments can step in and take one side or another; what it cannot

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do is preserve the community.

This is all a theoretical model, and one could object that it is a recipe for chaos and ethnic hostility. Any country run according to such federalist principles would soon degenerate into a Bosnia. In fact, the reverse is true. In the rest of Yugoslavia the break-up took place along ethnic lines. Bosnia, however, is an artificial nation without a history, where Tito deliberately subverted and undermined Serb and Croat nationalist impulses as part of a general strategy to prevent the emergence of strong opposition to his regime. If Bosnia had the "right" to secede from Yugoslavia, then the Bosnian Serbs had an equal right to secede from Bosnia, particularly since they objected to living under an Islamic fundamentalist regime directed by the very people whose fathers and grandfathers, as allies of the Nazis, had practiced genocide against the Serbs in the 1940s. If either the Serbian monarchy or the Communist republic had permitted home-rule and local government to its peoples, the break-up might not have had to take place.

Ultimately, a federal system rests on the right of the members to withdraw their allegiance to the federal state. Such a move was anticipated by the authors of the *Federalist*, and the right of secession was commonly affirmed in the North, even by the Pennsylvania abolitionist, William Rawle: "The secession of a state from the union depends on the will of the people of such state."[52] If a federal union is permanent, with no provision for secession, then the protection of a minority's rights will be dependent upon the good will and kindness of the majority. A federal system, if it is not to turn into an empire, must recognize this right of secession as the ultimate protection of a community's rights. By 1860 a large number of American states, including several that had contributed their blood and treasure to the revolution, had come to the conclusion that a numerical majority in the North was determined to subjugate the South. Their evidence? Protective tariffs that benefited northern manufacturers at the expense of southern agriculture; unequal shipping rates that penalized the South; a one-sided and hypocritical attack on the institution of slavery that left the exploitation of northern labor untouched. As Calhoun had predicted, the campaign to force seceding states back into the Union destroyed forever the old Union formed in 1776 and refined in 1787.

Setting aside all the complicated political and constitutional issues of the 1850s and 60s, the nub of the matter is this: one group of Americans decided they knew what was best for the whole country and they were

52. *A View of the Constitution* (Philadelphia, 1825, repr. Baton Rouge, 1993), p. 238.

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determined to impose their vision of justice at the point of a bayonet. That same argument, applied to Europe, was used to justify President Wilson's Crusade for Democracy. Today, the intellectual and political descendants of Lincoln and Wilson are eager to impose this vision on the entire world, forcing primitive cultures in the Philippines to integrate themselves into world markets, intervening in tribal wars to impose "democratic" regimes, signing international declarations of human rights, which in principle turn over the private problems of everyday life to UN jurisdiction.

The federalist answer to such glorious visions is a confession of ignorance. Individuals and social groups cannot know how it is best for others to conduct their lives. I cannot regulate another man's family or give laws to his city; such privileges belong only to those who are embedded within a social context. I may detest the purdah endured by Muslim women in Iran or object to collectivist economic practices in Russia, but until I become a member of those societies I have no right to impose my views except to the extent that criticism or preaching may change minds or alter habits.

"One of the sharpest of history's many ironies is the spread of the federal idea throughout the world coincident with its decline in the United States, the country that proved its value for mankind."[53] What Felix Morley observed in 1959 is even more accurate at a time when the *Lega Nord*'s campaign for a federal constitution in Italy coincides with a rush to consolidate the power of the government in Washington. Today, an imperialist American regime is imposing so-called democratic capitalism all over the world, while at the same time it is merging the separate states and communities into one, uniform administrative system. Federalists believe that, in the long run, states established on false and unnatural principles will grow too heavy for the weak foundations on which they rest. Every violation of the federal principle (whether in the form of democratic globalism that attacks the sovereignty of other states, civil rights laws that destroy the rights of provinces and states, or child protection laws that invade the sanctity of the most basic and natural human association) weakens the social fabric and undermines the regime. In the collapse of one "evil empire," the prophet may read the future collapse of its antagonist.

53. Felix Morley, *Freedom and Federalism* (1959, repr. Indianapolis 1981), p. 270.

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Federalism, Subsidiarity and the European Tradition: Some Clarifications

Thomas O. Hueglin

Introduction

For someone who for many years has been working on federalism, decentralization and other aspects of spatial politics from a critical rather than conformist perspective,[1] the (re)discovery of federalism by critical research and scholarship can only be welcome. More recently, the focus of this critical scholarship has been on three main and interrelated areas of inquiry: on a critique of what has been labelled the "conformist federalism" of intergovernmental relations;[2] on the prospects of a democratic federalism in the post-Maastricht European Union;[3] and on the principle of "subsidiarity" as the conceptual as well as institutional linchpin for such a decentralized federalism.[4]

As welcome as these contributions from kindred spirits are, they sometimes appear driven by an ambition of inventing the wheel all over again. In the process, critique may overshoot the mark, and conceptualizations may fall short of the target.

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1. See, for example, Thomas O. Hueglin, *A Political Economy of Federalism: In Search of a New Comparative Perspective With Critical Intent Throughout* (Kingston: Institute of Intergovernmental Relations, Queen's University, 1990).
2. Susan Bishay, "Conformist Federalism," in *Telos* 95 (Spring 1993), pp. 77-108.
3. Paul Piccone and G. L. Ulmen, "Schmitt's 'Testament' and the Future of Europe," in *Telos* 83 (Spring 1990), pp. 3-34; M. Rainer Lepsius, "Beyond the Nation-State: The Multinational State as the Model for the European Community," in *Telos* 91 (Spring 1992), pp. 57-76; David Marquand, "Reinventing Federalism: Europe and the Left," in *New Left Review* 203 (January//February 1994), pp. 17-26.
4. Ludger Kühnhardt, "Federalism and Subsidiarity," in *Telos* 91 (Spring 1992), pp. 77-86.

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Bishay's critique of Elazar's intergovernmental school in American federalism is a case in point. On the one hand, she can hold against Elazar with some justification that he tends to collapse federalism "into its opposite — liberalism," ultimately watering it down as a "stand-in for pluralism,"[5] and that for him "federalist" and "American" eventually become synonymous.[6] On the other hand, Elazar's life-long search for the meaning of federalism[7] surely has produced more substance than can be gained from the overly narrow and institutionalist (not to say statist) reading that Bishay retrieves from Carl Schmitt.[8] Her polemical dismissal of the "peculiar 'theological' twist" in Elazar's federalism[9] is itself peculiarly void of cultural-historical context: modern political theory did, after all, depart from early-modern models of social life among a variety of religious groups trying to survive in an age of religious war and persecution, and under the threat of dawning state absolutism. Thus, next to the "federal theology" of the Reformed Church, one finds the "Protestant work ethic," the "Civill religion" of the Hobbesian world of acquisitive individuals and, yes, the conservative beginnings of "subsidiarity" in the Catholic Church.

Similarly, the sudden praise of decentralized federalism in the European Union, as a third path in between (collapsing or collapsed) American Wilsonianism and Soviet Leninism,[10] must take some breath away from all those who have devoted considerable energy to the analysis of European unification as an exercise in maximizing national self-interest while externalizing (i.e., Europeanizing) social costs. Piccone and Ulmen doubtlessly come to the crucial federalist point when they affirm that a "fiercely autonomous" European community of regional entities "necessitates an equally strong unifying center" of constitutionalized European jurisprudence in order to avert the "debilitating statist involution" of the New Deal kind.[11] Such a center, however, is nowhere in sight.

Far from a "truly pluralist geopolitical alternative,"[12] the "*Grossraum*"[13] of post-Maastricht Europe may end up resembling precisely the

5. Bishay, "Conformist Federalism," *op. cit.*, p. 97.
6. *Ibid.*, p. 96.
7. For example in the *International Encyclopedia of the Social Sciences,* (McMillan, 1968).
8. Bishay, "Conformist Federalism," *op. cit.*, p. 77.
9. *Ibid.*, pp. 93-94.
10. Piccone and Ulmen, "Schmitt's 'Testament' and the Future of Europe," *op. cit.*, p. 5.
11. *Ibid.*, p. 13.
12. *Ibid.*, p. 33.
13. *Ibid.*, p. 31.

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same dualized geopolitical space the US is currently constructing within the framework of the NAFTA, a "two-thirds society"[14] of have and have-not regions at best. For wealthy regions, the renewed insistence of federalist decentralization becomes synonymous with a double strategy of unloading social and fiscal responsibilities. They no longer want to pay for fiscal equalization domestically, and they certainly do not want the European Union to acquire the kind of centrist powers that would bring such costly responsibilities back in through the *Grossraum* door. The decentralist card of European federalism is played in exactly the same way by Edmund Steiber's right-wing Christian Social Union in wealthy Bavaria, as it is by Umberto Bossi's Northern League in wealthy upper Italy.

Finally, the principle of subsidiarity may well be the philosopher's stone en route to a non-statist and non-centralized future of political community and citizenship. But here more than anywhere else, a quick and superficial recourse to textbook wisdom and some other inadequate sources cannot suffice.[15] In particular, the reference to the subsidiary principle as embedded in Catholic social doctrine of the *Quadragesimo Anno* kind raises more doubts than hope that it is from here that political community can become redefined as a progressive category. It is necessary to quote at some length: "The principle of subsidiarity judges the results of social life. Even within the family no one should be asked to do something beyond their powers and abilities, and all should be assisted to reach their goal and make themselves into the best person possible."[16] Even moderate feminists of the liberal persuasion will wince. This is precisely how the Catholic Church attempted to maintain its traditionalist grip on family life in fascist Italy, competing against the hegemonic aspirations of the corporativist state. Subsidiarity in this context meant that the state should not meddle with traditional family life, and especially not with the traditional distribution of roles and "abilities" between men, women and children.

Within the European Community, subsidiarity has become a controversial issue as well. In an internal memorandum to the President of the

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14. This is how East German playwright Heiner Mueller characterized the social consequences of German unification: a polarization between two thirds sustained or even intensified (mostly Western German) affluence, and one third (mostly East German) lasting structural peripheralization; quoted in *Der Spiegel* 31 (1990), p. 141. On the European implications, cf. William D. Graf, ed., *The Internationalization of the German Political Economy* (New York: St. Martin's Press, 1992).

15. See Ludger Kühnhardt, "Federalism and Subsidiarity," *op. cit.* Kühnhardt's brief outline of federalism in German and European history (pp. 79-82) relies on what can only be regarded as a dated source with not much more than textbook quality (Deuerlein), and a rather inadequate German excerpt from Althusius' *Politica methodice digesta* (Wolf).

16. *Ibid.*, pp. 83-84.

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European Commission, Jacques Delors, it has been pointed out that the subsidiarity principle now anchored in the Maastricht Treaty can be traced back to 16th century European political thought, and in particular to the 17th century political theory of Johannes Althusius (1557-1638).[17] This recourse to the history of European political thought seems to suggest that subsidiarity has its roots in an early-modern Europe not yet dominated by a fully sovereign nation-state system, and that it is therefore uniquely appropriate for the organization of a post-nation-state European union. It is, in other words, the timeless operational principle of a federally organized democratic European polity.

However, what appears to be a venerable European tradition for federal political organization has also come under attack as a self-centered practice of interest-maximizing nation-states in the post-Maastricht European Union. In particular, subsidiarity has been criticized as a decision-making principle allowing each country to retain full sovereignty over its own policy priorities, while leaving possible external costs to Community responsibility.[18] Instead of mobilizing consent for a European political community on the basis of democratic cooperation and socio-economic fairness, it facilitates a self-centered retreat from universal community goals. This may not only lead to increased peripheral pauperization in the European Union,[19] but might also reopen the doors to a backlash of fundamentalist nationalism.[20]

All these questions warrant more discussion and reflection before federalism and subsidiarity can be embraced by critical thought as new paths toward the democratic organization of social space. The following essay is much more modest. It will be argued that a legitimization deficit of the subsidiarity principle as embedded at present in the European Community structure does indeed exist, and that it stems from its historical and conceptual incompatibility with market liberalism as the dominant mode of Community regulation. From a contextualized discussion of early-modern political theory, it will be shown that there is a departure of two different

17. Cf. Marc Luyckx, "Histoire philosophique du concept de subsidiarité," in *Cellule de Prospective*, 13 February (Brussels: European Commission, 1992).

18. Klaus Haensch, "Wer ist denn schon für Zentralismus?" in *Das Parlament* 11 (1993), p. 12.

19. Fritz W. Scharpf, "Regionalisierung des europaeischen Raums — Die Zukunft der Bundesländer im Spannungsfeld Zwischen EG, Bund und Kommunen," in *Regionalisierung des Europäischen Raums*, Cappenberger Gespräche der Freiherr-vom-Stein-Gesellschaft (Köln: Grote, 1989), pp. 15-18 and "Diskussion," pp. 40-41.

20. Marquand, "Reinventing Federalism," *op. cit.*, p. 19.

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European traditions — an older solidaristic one based on cooperation and consent, and a newer individualistic one based on competition and majority rule. A brief reconstruction of the subsidiarity principle in the political theory of Althusius will demonstrate that the European roots of subsidiarity are firmly grounded in the former tradition. A few concluding considerations will reflect on the possibility of making the future development of the European Union more compatible with this tradition.

The Great Historical Divide

A dramatic change began to take shape in political organization during the European transition from the 16th through the 17th century. The old European order of plural rule, loose and overlapping federal administration, and corporativist social allegiance and identity was challenged by a new statist order of centralized territorial power and its corollary, individualized social relations.[21] Until the ultimate victory of the latter over the former, both traditions would continue to exist side-by-side. But a first and clear indication of the dawn of a new statist age came with the English Civil War of the 1640s.

The Civil War and its ultimate result, the triumph of parliamentary absolutism over the King in the Glorious Revolution, can be traced to the historically and geographically distinct early emergence of a dominant middle class in England.[22] In 17th century England, socio-economic transformation first caught up with the political system. The Puritan revolution was carried forward in the name of "religion, liberty and property." Economic modernization and the first stirrings of industrial capitalism began to divide old and new interests. In the Civil War, Parliament was mainly supported by the economically advanced South and East, while the King's support was mainly based on economically backward areas in the North and West. Eventually, social standing and traditional family rivalry as the primary causes of instability were replaced by "political alignment." This means not only that traditional allegiances of power were beginning to be replaced by political alignments dictated by more economic and utilitarian considerations, but also that the political process itself was transformed. Members of Parliament began to act according to

21. See Charles Tilly, "Reflections on the History of European State-Making," in Charles Tilly, ed., *The Formation of National States in Western Europe* (Princeton: Princeton University Press, 1975), especially pp. 26-27.

22. Cf. Barrington Moore, Jr., *Social Origins of Dictatorship and Democracy* (Boston: Beacon Press, 1966).

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their common social, economic and strategic interests. Such unity of class, ideology and strategy, now carried by similar individualist aspirations rather than divided by corporativist allegiance, favored the introduction of the majority principle which by the mid-17th century had become the dominant mode of decision making in Parliament.[23]

As is well known, this new order found its theoretical expression in the political thought of Thomas Hobbes. For Hobbes, who had been travelling widely all over Europe during the first half of his life, the case was quite clear. Only absolute authority could overcome the civil conflicts of the time. From self-imposed exile in France, he began to write his major political works, *De Cive* (1642) and *Leviathan* (1651), with a clear royalist preference. Earlier on in *Leviathan*, for example, writing at the court of the exiled Charles II in Paris, he still emphasized that Parliament was only an advisory body, to function at the behest, and subsequently to be dissolved by, the royal sovereign.[24] Later, in his "Review and Conclusion,"[25] and presumably under the impression of the final royalist defeat by Cromwell's army at Dunbar (1650), he ended his work with an "explicit call for submission to the new regime." Moreover, he switched from an earlier endorsement of the orthodox (Anglican) religion as the sole fundament of ideological stability (in *De Cive*) to the espousal of a more tolerant "civil religion," thus even more gravely undermining the royalist claim for divine sovereignty. Eight months after the publication of *Leviathan*, Hobbes was banned from Charles' court and returned to Cromwell's England.[26]

The new regime was parliamentary. Already earlier, in *De Cive*, Hobbes had insisted that political stability in a civil regime of many required absolute submission to the majority principle, on "the Right of the major part agreeing." The dissenting minority had to consent with the established will of the majority, or would be treated by "the *Right of War*" as "an Enemy."[27] For the new bourgeois classes, this obviously reopened the issue of individual freedom and economic liberty.

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23. This section is based on Christopher Hill, *The Century of Revolution 1603-1714* (New York: Norton, 1961), especially chapters 6, 8 and 9; compare Reinhard Bendix, *Kings or People* (Berkeley: University of California Press, 1978), chapter 9.

24. Thomas Hobbes, *Leviathan*, XXII/121. This and the following citations are given in Hobbes' own chapter enumeration / followed by the original pagination.

25. *Leviathan*, A Review and Conclusion / 389-396.

26. This interpretation largely follows Richard Tuck, "Introduction" to Thomas Hobbes, *Leviathan* (Cambridge: Cambridge University Press, 1991), pp. xvii-xxiii.

27. Thomas Hobbes, *De Cive*, VI.2 (Hobbes' original enumeration).

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In a passage already foreshadowing essential elements of liberal government restraint that would make John Locke the champion of these new bourgeois classes some forty years later, Hobbes defined the liberal space left to the individual under the governance of the leviathan, whether royal or by parliamentary majority: In all actions not regulated or "praetermitted" by the law, men have the "Liberty, of doing what their own reasons shall suggest, for the most profitable to themselves." What needs to be understood, though, is why Hobbes could assert, in the same breath, that this liberty was not inconsistent at all with the "unlimited power of the sovereign," and that moreover it was not "the Libertie of Particular men; but the Libertie of the Common-wealth."[28]

Elsewhere, Hobbes' formulation of Libertie found expression in a more precise distinction. The power of the law should only extend over actions, not thoughts, religious or otherwise.[29] Yet the contradiction between liberty and authority does not seem resolved here. As there can be no meaningful action without thought, Hobbes seemed to be leaving something out: how could there be liberty of thought when men were free to do what the law did not restrict or regulate, when those actions were to be guided by "what their own reasons shall suggest?" It seems that there must be a part of reasoning, public rather than private in nature, that the leviathan was to be concerned about. Indeed, it appears that the sphere of thought was not to be given away entirely to private reasoning.

The ultimate purpose of the leviathan, it has been suggested, was the establishment of a civil religion or, in modern language, a dominant ideology. What the participants in the social contract had to submit to the sovereign were not their lives or actions but "their Wills, every one to his Will, and their Judgments, to his Judgment."[30] The power of the leviathan was meant to be "an epistemic power, to determine the meanings of words in the public language, and to induce his subjects to agree on what they termed 'good' and 'bad'."[31]

In other words, it was the power to establish hegemony over a bourgeois society whose stability and survival depended on one and the same idea of "Libertie." It aimed at the forceful eradication of all factions with alternative visions of liberty in an individualized market society accepting the majority principle as the institutionalized guarantor of hegemony in

28. *Leviathan*, XXI/109-110.
29. *Leviathan*, XLVI/378.
30. *Leviathan*, XVII/87.
31. Tuck, "Introduction," *op. cit.*, p. xvii.

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thought and action. In such a society there was no place for subsidiarity as a principle of differentiated levels of decision-making. Such differentiation would only signal that hegemonic control over thought and action did not exist or had broken down. Instability and civil war would return.

There is one central assumption in Hobbes' construction of modern society that departs radically from all earlier European political thought: that the existence of groups, parties and factions must inevitably lead to civil war. Hobbes wanted to do away with all factionism. As a matter of fact, he denied the natural existence of groups and classes in society. Instead, he insisted that these factions were only the consequence of political power division. From here stem the modern assumptions of individual liberalism and the organization of modern liberal democratic politics recognizing the sovereignty of the people as individuals only, denying their access to the formal political process as organized collectivities, groups, regions, nationalities or classes.

No longer able to exclude the possibility of sovereign governance by assembly rather than the monarch, Hobbes had to insist on strict majority rule to avoid the problem of divided power. The majority principle became the only peaceful means of political accommodation. Minorities had to be redefined strictly as minorities of individuals instead of dissenting collectivities.

Althusius

The other and older European tradition of political thought had always accepted the existence of groups and classes as natural building blocs of society. Plato took classes and factions for granted, organizing them into a rigid caste system of productives, warriors and guardians. Aristotle held against Plato a more liberal vision of social stability in the mean: a plurality of group or class interests would all contribute to a healthy polity as long as an extreme polarization between rich and poor could be avoided. From there, Machiavelli proceeded to analyze the crisis of the Florentine Republic as a consequence of excessive and corrupted social inequality.[32] The Prince was to stabilize the conflicts of these factions, not abolish them. Even Bodin, first insisting on indivisible

32. The most convincing recent monograph on Machiavelli as a theorist of social crisis is Frank Deppe, *Niccolò Machiavelli* (Cologne: Pahl-Rugenstein,1987). See also Thomas O. Hueglin, "Machiavelli Revisited in the Neoconservative Age: Socioeconomic Conditions and Crisis Theory in Early Modern and Postindustrial Society," in *Journal of History & Politics* No. 8 (1991), pp. 123-152.

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and absolute sovereign authority as did Hobbes after him, continued to see the usefulness of factions, groups and classes in a decentralized unitary system of administration.[33] Contrary to Hobbes, the existence of factions was not seen as a consequence of political power division, but, conversely, the division of powers in organized politics was seen as the consequence of natural societal divisions.

The medieval theories of collective minority resistance against tyrants as well as the quasi-federal organization of the Holy Roman Empire grew out of this older tradition. Both received renewed attention in the post-Reformation period of fragmented territorial consolidation and religious persecution. The Augsburg Religious Peace of 1555 had given each ruler the right to determine the official and exclusive religion in his territory. Moreover, the religious conflicts were superimposed by economic ones between the new bourgois elites and the old feudal patriciate. Religious and modernizing economic minorities sought to stabilize their existence through recourse to the old order of autonomy, plurality and quasi-federal coordination of spheres of influence.

A particularly important conflict of this kind was the Revolt of the Reformed Netherlands against Catholic Spain in the second half of the 16th century. Many Dutch Calvinists found refuge in German territories at the time. In Nassau-Dillenburg, Johan the Elder, a brother of William of Orange, founded the University of Herborn, a "school of federal theology" which became a center of political Calvinism. In the northern German seaport of Emden, the Reformed city bourgeoisie battled for autonomy against a Lutheran provincial lord who needed the taxes of his wealthiest subjects for the transformation of Eastern Frisia from a feudal agrarian province into a modernized absolutist state. One of the professors at Herborn, Johannes Althusius, published a book of politics in which he attacked the new doctrine of undivided territorial sovereignty, attributing the rightful ownership of sovereignty to the federally organized body of the people. It became one of the most widely read books at the time.[34] One

33. See Thomas O. Hueglin, "Have We Studied the Wrong Authors? On the Relevance of Johannes Althusius," in *Studies in Political Thought* Vol. 1, No. 1 (Winter 1992), pp. 79-80.

34. Johannes Althusius, *Politica methodice digesta* (1603, 1610, 1614 and 1617). The most widely distributed edition was the third of 1614. It has been reproduced in *facsimile* (Aalen: Scientia, 1958). Commonly available in North America is the slightly abbreviated *Politica methodice Digesta of Johannes Althusius*, Carl Joachim Friedrich, ed. (Cambridge: Harvard University Press, 1932), reprinted (New York: Arno Press,1979). A similarly abbreviated translation of the *Politica* is available as *The Politics of Johannes Althusius*, ed. and tr. by Frederick S. Carney (London: Eyre & Spottiswoode, 1964).

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year after the publication of its first edition in 1603, Althusius accepted an appointment as city syndic in Emden, crucially strengthening the city in the battle with its provincial lord for years to come.[35]

The social starting point of Althusius' political theory was not the individual but an ascending order of autonomous yet interconnected community life from families[36] and professional guilds to cities, provinces and finally the universal commonwealth. What might at first glance be misunderstood as a merely schematic reconstruction of the extant power relations of the old order[37] was in reality much more: a bold attempt to rescue the solidaristic tradition of the smaller communities of that old order into the modern world of the large territorial state. Theoretically, it was an attempt to square the democratic virtues of the Greek *polis* with the strategic stability of the Roman Empire. Practically, it was an attempt to autonomize the socio-economic and cultural-religious life of a plurality of communities within the new territorial context of modern trade and commerce. Althusius' *Politica* thus was the first modern theory of federalism. The first modern conceptualization of the principle of subsidiarity can be traced to his attempt to balance the allocation of powers between communal self-determination and the universal requirements of modern statehood.

Societal Federalism

The key concept in Althusius' theory of politics is "consociation": "Politics is the art of consociating men for the purpose of establishing, cultivating, and conserving social life among them."[38] The entire polity is a federally constructed edifice of multiple layers of consociations. Family and kinship are private and natural consociations. Colleges, guilds and

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35. For a more complete discussion of Althusius' political theory and its historical context, see Thomas O. Hueglin, *Sozietaler Föderalismus* (Berlin: De Gruyter, 1991); for a somewhat summarizing article in English, see Hueglin, "Have We Studied the Wrong Authors?" *op. cit.*, pp. 75-93.

36. Althusius' discussion of family life for the most part remains at a traditionalist level comparable to Catholic social doctrine. However, he insists that general principles of social justice apply to family life as well. Families are private instead of public communities, but they are political communities nevertheless. Contrary to most observers at the time, Althusius also has no objections to women in public office.

37. See Jürgen Habermas, *Theorie und Praxis* (Frankfurt: Suhrkamp,1976), p. 68.

38. *Politica* I.1; citations follow Althusius' enumeration in chapters and para- graphs. My translations largely follow Carney, *The Politics of Johannes Althusius*, *op. cit.* Carney, however, translates "consociatio" with "association" instead of "consociation." I find that misleading because it may lead to confusion with modern liberal notions of plural society.

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estates are private and civil consociations held together by common professional and social interests. Cities and provinces are constituted from the various colleges, guilds and estates as particular public consociations. In turn, they combine in the formation of the commonwealth as the final and universal consociation. However, Althusius goes one step further, discussing functionally limited as well as politically complete confederations among several commonwealths.

The overall result can be characterized as a system of "societal federalism"[39] because the participants are both social and spatial consociations. Representation is therefore functional (professional guilds including an organized peasantry) as well as territorial (cities and provinces). Representation is also indirect because the administrative councils at each consociational level are composed of government representatives from the consociations at the next lower level, not of individual members of those consociations.[40]

The purpose of consociation is the mutual communication of things, services and common rights.[41] The provision of goods and services is based on the principle of "mutual aid,"[42] but it also requires common regulation and administration. What is most conspicuous in Althusius' definition of politics, however, is his insistence, first of all, on the inclusion of all social activities into the sphere of the political, and, secondly, the inclusion of law and governance as part of the process of communication rather than a regulatory superstructure with an entirely different logic of social intervention. Political community is a common social enterprise including cultural, economic and political activities.

In order to establish the conceptual bearings of political community in a compound or federal polity, Althusius deliberately retracts a venerable principle from the medieval heritage of counciliar resistance against papal and imperial superiority, and directs it against the new absolutism of centralized territorial governance: "What pertains to all, must be approved by all."[43] This means that, in matters common to all, the majority cannot decide and unanimity on the basis of consent must prevail. But it means far more than just a consensus requirement in decision-making.

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39. See Hüglin, *Sozietaler Föderalismus*, *op.cit.*
40. The same difference distinguishes the German *Bundesrat*, whose members are representatives of the German *Länder* governments, from the American Senate, whose members are directly elected representatives of the states.
41. *Politica*, I. 10.
42. *Politica*, I.27
43. *Politica*, IV.20.

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Its purpose is the organization of solidarity; hence the insistence on mutual communication and sharing, common property and counciliar decision-making. Politics is not a formal procedure of reaching binding decisions, but primarily a process of consensus-building.

Within a compound realm, the organization of mutual communication and consent proceeds from the concrete to the general. The narrower and more specific the consociation, the more consent and unanimity can be expected. The wider and more encompassing, however, the more decisions have to be based on majority votes. As a corollary, legal basis and political reach appear more general as well as limited. Each member consociation retains autonomy over specific sets of "civil law,"[44] and the regulatory competences of higher levels of consociation are "explicitly" circumscribed and enumerated.[45] In this sense, Althusius can come to the rather startling conclusion that "a commonwealth appears the more secure and stable, the less power those have who rule."[46]

Subsidiarity

The organization of political community in a federal commonwealth is based on an elaborate concept of subsidiarity. But the essence of Althusius' principle of subsidiarity is not a self-centered retention of autonomy over particular policy priorities. Instead, it establishes the adequate distribution of powers in a multi-layered confederation according to universal standards of social need and utility.

The specific "civil laws" of each consociational level are determined by "self-sufficiency" instead of by the maximization of growth.[47] Subsidiarity circumscribes the dialectical balance between autonomy and solidarity. The regulatory power of the superior order is held to preserve the autonomous rights of each consociation which must not be diminished or augmented at the cost of another.[48] The purpose of superior orders of administration is the equitable provision of living conditions for all.[49] Repeating the old formula of consensus requirement for matters pertaining

44. *Politica*, IX.1.
45. *Politica*, XIX.7.
46. *Politica*, XIX.8.
47. *Politica*, XI.2 and XXIX.1. It is this insistence on *autarkeia* (self-sufficiency) rather than *oikos* (household) that makes Althusius one of the first theorists of something that might well be labelled "ecological community;" see Robert Nisbet, *The Social Philosophers* (New York: Washington Square Press,1983), pp. 179-187
48. *Politica*, XXIX.2.
49. *Politica*, XVI.2 and VI.47.

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to all, Althusius elaborates on the political purpose of this provision: It is not to be understood as a negative consensus requirement allowing each member to opt out of the common interest, but a positive commitment to the establishment and administration of joint tasks requiring the "faculties, strength, aid and dedication of all."[50] This means, at least by implication, that subsidiarity cannot be misconstrued as a concept allowing for the maximization of self-interest or for parochial withdrawal.

Subsidiarity appears here as much a constructive principle for the retention of particular autonomy as a commitment to common social and regional balance. The establishment and maintenance of minimum standards of social existence must be possible for all. If this is not so, subsidiary regulation from above becomes obligatory. In such cases the consensus requirement appears invalidated. However, it must not be forgotten that consent first leads to the establishment of common administration and the principles of solidarity to which it must adhere.

Subsidiarity in the political thought of Althusius is not a decision-making mechanism. Neither is it merely a conservative attempt to insulate the old orders against the new statist influences resulting from socioeconomic modernization. Instead, it appears as a qualitative guideline for organized political cooperation in a civil society. In particular, Althusius provides the conceptual bearings of a community-oriented political culture and ideology that was very much a practical possibility at the beginning of the modern age. It was very much a different culture and ideology from the one Hobbes would propagate half a century later on the basis of individualized thought and action in a competitive market society.

The organizational success of the latter model and its victory in the modern world of state and market relations is well-known. The recourse to Althusius is not an attempt to rewrite history. However, the historical conclusion can be drawn that the principle of subsidiarity as a process of power-sharing among "fiercely autonomous" communities in a compound and multi-layered political system is indeed incompatible with the tradition and practice of an individualized market society and its corollary, the hierarchical nation-state. It seems possible, therefore, to utilize the political theory of Althusius as a yardstick and heuristic tool to reassess both the current *acquis communautaire* and the future process of community-building in the European Union.

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50. *Politica*, XVII.60.

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"*Europe des Patries*"

On the basis of the distinction of two European traditions of political thought, European integration has been characterized by a highly contradictory parallel pursuit of both: On the one hand, there is functionalist market integration, the creation of a level playing field for individual competitive actors in a federal European state system ultimately governed by the majority principle. On the other hand, there is the idea of a confederal political union, aiming at the creation of a "*Europe des patries*" instead of an American-type juxtaposition of federal state and melting-pot society, now essentially strengthened by the incorporation of the subsidiarity principle into all future processes of European community-building. As has been shown from the analysis of Althusius' political theory, in political practice the pursuit of the latter requires commitment to and political organization of socio-political as well as economic solidarity as a corollary to the retention of national and/or regional political structures of collective self-determination.

The point here is not that the European Union, along with all other imperfect political organizations, is based on contradictory and often conflicting principles. It is that, while the adoption of subsidiarity will do little or nothing to promote the European tradition of solidarity, it will ultimately also undermine the organizational success of the other tradition based on individualized market competition.

Currently, and on the basis of the Single Act and the Maastricht Treaty the European Union resembles an unfortunate hybrid of both traditions, with the political organization of and commitment to a minimal consensus on social and economic solidarity superimposed on a largely unregulated market system. Thus far-reaching regulations at the Community level regarding agricultural or industrial policy do not constitute a solidaristic commitment to the pursuit of common interests and the guarantee of equitable living conditions. On the contrary, they resemble a minimal consensus among actors maximizing self-centered interests and externalizing, i.e., Europeanizing, costs. The adoption of the subsidiarity principle only serves to perpetuate and deepen this sorry state of affairs — precisely because it appears superimposed on a dominant Community practice with a different tradition and logic.

In fact, the new subsidiarity will bring about a retreat from the *acquis communautaire* regarding social and regional solidarity. In the social chapter of the Maastricht Treaty, subsidiarity has already been put to the test: unanimity has been prescribed for all future Council decisions on

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workers' codetermination — a significant retrenchment, contrary to the European Commission's suggestions.[51] Moreover, subsidiarity rights are reserved obviously only to territorial actors. The extension of the subsidiarity principle to autonomous labor rights and collective bargaining, for example, is not even on the agenda.

Having been granted to opt out of the social chapter in the Maastricht Treaty altogether, Britain provides an even more alarming example of self-centered territorialism that could become the norm under the subsidiarity guise. A "classic example of free-rider politics . . . Britain has been allowed to escape her share of the social costs of the single market."[52] A bit nastier, but to the same point, the question has been raised (and answered in the affirmative): "Is that not what Hurd and Major mean by 'subsidiarity': free trade, outdoor relief, and otherwise being left alone?"[53] Other countries, such as Denmark, may fancy that subsidiarity will allow them to retain political control over internal levels of solidaristic social commitment against a Community "market for corporate control."[54] But how long can they stem the tide when social dumping in the name of subsidiarity becomes more wide-spread?

And it will have to become more widespread, according to the one-sided logic it is serving. The organizational success of the Hobbesian commitment to a civil religion of individualized market behavior has been rooted in unprecedented economic growth. The degeneration of a common commitment to solidarity and collective action stemmed precisely from this aggregate social success. As Hirsch put it already some time ago: "The compelling attraction of economic growth in its institutionalized modern form has been as a superior substitute for redistribution."[55]

Accordingly, distributional struggle returns, not because of a crisis of economic growth but because of its success: "If everyone stands on tiptoe, no one sees better."[56] Everyone will try to become a free rider once again, seeking "outdoor relief" in the name of subsidiarity.

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51. Paul Windolf, "Mitbestimmung und 'corporate control' in der Europäischen Gemeinschaft," in Michael Kreile, ed., *Die Integration Europas*, PVS Sonderheft 23 (1993), pp. 120-142.
52. Marquand, "Reinventing Federalism," *op.cit.*, p. 18.
53. Tom Nairn, "The UKanian Survivor," in *New Left Review* 200 (1993), p.47.
54. Windolf, "Mitbestimmung und 'corporate control' in der Europaeischen Gemeinschaft," *op. cit.*, p. 122.
55. Fred Hirsch, *Social Limits to Growth* (Cambridge: Harvard University Press, 1976), p. 7.
56. *Ibid.*, p. 5.

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European Union

The European house can be built in many ways. If the principle of subsidiarity is to be employed as more than just a fig leaf shamefully hiding nationalistic aspirations, it has to be made consistent with organized structures of solidarity. Maybe this cannot amount to much more than a social democratic vision of social fairness in a market society whose self-centered logic is no longer challenged. Within the old nation-states, this vision was precisely one of collectively organized social codetermination. Within the European Community, that vision and logic of redistributive solidarity was to be extended to regional and national actors as well. As it stands, neither is possible in a European Union of free trade and corporate control. Instead, subsidiarity within a nationalistically renewed "*Europe des patries*" allows each level of government to use the other level as an excuse for its own selfishness.

There is of course nothing wrong with a "*Europe des patries*" as a alternative vision and organization of a European Union. As the political theory of Althusius suggests, it is a vision as venerable within the European tradition as that of a European federal state, and it is the older one. But as Althusius also suggests, it would have to be organized as a Europe of subsidiarity and solidarity. In such a Europe, the Council of Ministers remains the more important part of the decision-making process in comparison to a European Parliament continuing to provide "sober second thought" and consultative reflection. This reversal of the traditional roles of lower and upper chambers appears justified as long as the center of political gravity remains within the European nation-states. The political legitimacy and accountability of the Council, however, would have to be augmently drastically through social and regional control.

A social charter of universally binding norms of solidarity, pertaining to all aspects of work-place protection, minimum wage, welfare protection, gender equity, minority protection as well as environmental conservation would have to be implemented. Sanctions in the form of social tariffs would have to be imposed against those who seek comparative trade advantages on the backs of their own work force. This is not an argument against free trade and aggregate economic growth. It is, however, a substantial redefinition of what is "free" in free trade.[57] In theoretical terms, it is an acknowledgment that market economy and social policy cannot lastingly operate with different logics in a Europe of soli-

57. Cf. Michael Lebowitz, "Trade and Class: Labor Strategies in a World of Strong Capital " in *Studies in Political Economy* 27 (Autumn 1988), pp. 137-148.

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darity and cooperation. Only under a common umbrella of social standards of solidarity can subsidiarity become a legitimate principle for the allocation of autonomous regulatory powers. The retention of policy autonomy would allow a wide variety of options towards the achievement of such standards, but no longer discretion over the question whether or not to adopt them at all.

As the Althusian model of societal federalism proceeds from smaller social communities with more limited functional goals to larger territorial ones with more general political aspirations, regional has to complement social codetermination. Under the current *acquis communautaire*, the regions of Europe, whether constitutionally recognized as in Germany, Spain and Belgium, or unrecognized as in Britain and France, generally have to fear an erosion of influence over national policy formation without gaining *subsidiary* access to European policy formation. Banding together in the European Parliament, regional party formations have at times sought to exercise pressure on their national governments, and they have succeeded in establishing a consultative regional council within the European Union. The logical extension of the subsidiarity principle would require regional policy autonomy as a fully developed third tier within a confederal European Union, and the bicameral extension of the Council of Ministers into a national and regional council with co-equal decision-making powers.

Such a regionalization of the European political process would have to be balanced by the same principles of solidarity regulating the "*Europe des patries*." There is considerable evidence that economically stronger regions, such as, e.g., Catalonia or Lombardy and their neo-regionalist party formations, aspire to more political codetermination at the Community level precisely in order to unburden themselves from redistributive solidarity at the national level. Insofar as subsidiarity has become the new battle cry for regionalist aspirations in Europe,[58] the same standards of solidarity have to apply. Otherwise, wealthy regions will opt out of national social obligation, perhaps even by cooperating directly at the European level, once again leaving external costs to national responsibility and, consequently, ever more difficult community regulation.

Conclusion and Afterthought(s)

Hobbes' theoretical ambition was the rational conceptualization of

58. Cf. Gisela Müller-Brandeck-Bocquet, "Europäische Integration und deutscher Föderalismus," in Michael Kreile, ed., *Die Integration Europas*, PVS Sonderheft 23 (1992), pp. 160-182.

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universal citizenship in a unitary polity of individualized actors. Althusius had earlier proposed an alternative concept of multiple citizenship within a plurality of federalized communities. The essence of his theory was that the federal balance between subsidiarity and solidarity had to be extended to politics, economy, culture and identity. In ancient Greece, one could only be an Athenian citizen by birth. In the Roman Empire, one became a citizen by conquest. In the Althusian polity, one could be a local, regional and, indeed, universal European citizen at the same time. It would appear that here lie the conceptual as well as ideological bearings for a successful European union.

Critical thought should embrace federalism and subsidiarity. If these are indeed old and venerable principles of organizing political community and citizenship, they have far too long been left to the "conformist" powers that be. But the new critical enthusiasm for federalism should be careful in keeping its clear distance from the self-serving agenda that is hidden behind much of the new federalist rhetoric. Some of the new regionalisms use the federalist battle cry for counter-hegemonic projects not any more acceptable than those of the old Jacobin nation-states. Instead of being carried by a new federal populism from below,[59] they are manipulated from above by activists who want "to resocialize" their constituencies into strategically malleable "communities of fate."[60]

The baby should not be thrown out with the bath-water either. The new focus on political community and citizenship has certainly opened up (or rather: reopened) new dimensions in critical thought extending beyond the old(er) and often reductionist conceptualizations of political society as driven by class antagonism alone. But given the overwhelming evidence of objective conditions of social polarization within regions, states and the global community, it seems at least premature to conclude that "a common political identity can no longer be conceived in terms of class."[61] Instead, the Althusian suggestion of conceptualizing the social and spatial dimensions in a project of societal federalism ought to be explored further. This would mean that states cannot simply

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59. Cf. Paul Piccone, "The Crisis of Liberalism and the Emergence of Federal Populism," in *Telos* 89 (Fall 1991), pp. 7-44.

60. Cf. Hudson Meadwell, "The Politics of Nationalism in Quebec," in *World Politics* No. 45 (1993), pp. 203-241.

61. Chantal Mouffe, "Preface: Democratic Politics Today," in Chantal Mouffe, ed., *Dimensions of Radical Democracy* (London: Verso, 1992), p. 3.

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be "de-centered."[62] In addition, economies would have to be made accountable to the new diversity of social and spatial actors (in the electronic age of flexible production, this does not have to mean going back to pre-modern cottage industries!), and a plurality of historical cultural identities would have to be "domesticated" in a civil society resembling "a setting of settings: all are included, none is preferred."[63]

Communities of fate are those in which the potential carriers of populism are turned into proverbial lemmings. Instead of leading the way to new and positive identities taking into account how individual existence is "embedded" in "various social roles and communal relations,"[64] they are led to negative encapsulation against what is conjured up as a hostile outside world. They are, communities of withdrawal as well as, (potentially at least) aggression. The European tradition of federalism and subsidiarity can lead in a different direction, one of "critical associationalism"[65] among a plurality of communities that are open rather than closed, creatively autonomous rather than parochially encapsulated.

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62. Cf. Warren Magnusson and Rob Walker, "De-Centering the State: Political Theory and Canadian Political Economy," in *Studies in Political Economy*, No. 26 (Summer 1988), pp. 37-71.

63. Michael Walzer, "The Civil Society Argument," in Mouffe, *Dimensions of Radical Democracy, op. cit.*, pp. 98 and 106.

64. Will Kymlicka, "Liberalism and Communitarianism," in *Canadian Journal of Philosophy*, Vol. 18, No. 2 (June 1988), p. 181; cf. also Anthony Black, "Nation and Community in the International Order," in *Review of International Studies*, No. 19 (1993), pp. 81-89.

65. Walzer, *op. cit.*, p. 105.

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Federalism, Self-Organization and the Dissolution of the State

Gus diZerega

The unitary nation-state is showing increasing signs of declining importance, and the most desirable alternative is not likely to be world government but rather an increasing devolution of power within increasingly federalized states. Federalism today seems almost quaint — a charming and sometimes irritating holdover from the political past, when Americans saw themselves more as residents of particular states than of the US as a whole. Its reputation was not enhanced when its rhetoric was used by state leaders seeking to defend the most distasteful and exploitative practices against their own citizens, as was long the case in the American South.

But this centralist prejudice is just that — a prejudice. There is more to federalism than a justification for cracker politics. Southern-style racist politics cannot be justified by a theory of democratic federalism. A theory of federalism necessary for understanding a coherent model of democracy may also provide a practical alternative for dealing with contemporary political problems. The widespread failure of political scientists to appreciate the implications of federalist politics is due largely to the modern history of the discipline, overconcerned with the study of the sovereign state. Hobbes is more influential than Locke, and his positivist concept of law and sovereignty strengthens this bias. Political science has generally sought to make states more "rational" in their operation, and to apply models of instrumental organization in analyzing how their functioning can be improved. All these biases encourage a misunderstanding of the nature of federalism.

The modern nation-state has its roots in undemocratic polities where, regardless of the rhetoric, regimes ruled primarily for the benefit of a small portion of society. Modern undemocratic polities share the same

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characteristic. These forms of government are most appropriately understood as institutions of domination where one group rules over others for its own benefit. Much modern political theory takes this model of politics as universal, and so is intrinsically incapable of adequately grasping the democratic federal principles initially prefigured in the writings of Alexander Hamilton and James Madison.

Most democratic theorists seem, often inconsistently, to agree with Hobbes about the nature of sovereignty, but disagree with him as to the best form of government for exercising it. A politics of domination requires the polity to be ordered as an instrumental organization so that the politically relevant sectors of society can be used to serve the interests of those who rule. People become resources used to attain the leadership's goals. The traditional model of sovereignty as the supreme source of law entails this model of the polity if a state is considered sovereign — if it is the final authority in making law within its borders.

Democratic Federalism

Federal political systems, such as that developed by the US Constitutional Convention, divide governmental power among several authorities, each possessing only a portion of the power to make laws. Each part of government is autonomous in the sense that it cannot be abolished by another part, its leadership is selected from its own citizens, and it has independent authority to tax, to make and enforce laws. Each acts directly on the citizen. Within this framework, ultimate authority rests with "the people." In such a political system no body can claim more authority than its rivals to represent "the people." Rather, each part of a federal system represents different aspects of the people — a unity incapable of adequate representation by any single body. Indeed, even if everyone voted in a referendum, "the people" would not be fully represented, for they comprise a political community extending over time.

Within such a system there is no single apex of power in the Hobbesian sense. Decision making arises out of many different autonomous centers. It is a polycentric rather than unitary polity.[1] This view of federalism makes

1. On polycentricity see Michael Polanyi, *The Logic of Liberty: Reflections and Rejoinders*, (Chicago: University of Chicago Press, 1951). For a more recent discussion, see Vincent Ostrom, Charles M. Tiebout, and Robert Warren, "The Organization of Government in Metropolitan Areas: A Theoretical Survey" and Vincent Ostrom, editor, "Polycentricity: The Structural Basis of Self-Governing Systems," both in Vincent Ostrom, *The Meaning of American Federalism: Constituting a Self-Governing Society* (San Francisco: Institute for Contemporary Studies, 1991), pp. 137-161; 223-244.

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little sense from the perspective of a modern political thought overly impressed by the historical character of most states as instruments of domination, reinforced by a theoretical framework conceiving sovereignty as domination. For example, Robert D'Amico and Paul Piccone write: "A contradiction between centralism and particularism was reluctantly embedded in the US Constitution when, because of the fragility and disorganization of the newly independent states, this federal document had to be based democratically on 'the people' rather than the federating units, as is normally the case in federations."[2] In fact, there was no contradiction *of this sort*. The tensions which ultimately brought on the Civil War had less to do with the weaknesses or contradictions within the federal principles underlying the Constitution than with the attempt to unify two different types of society, one of which, the antebellum South, developed increasingly in directions fundamentally antithetical to free democratic principles.[3] That flaws in the federalist conception as such were blamed for this tragedy is due largely to the fact that even today, more than two hundred years after *The Federalist* was written, most political theory has not caught up with the intuitive innovations underlying it.

Federalism and Democracy

The central problem with applying federal principles in a democratic polity has been succinctly put by Carl Schmitt: "Both democracy and federalism presuppose homogeneity. The necessary result of a federation of democratic states is the correspondence of democratic and federal homogeneity. Thus it is only natural in the development of democracy that the homogeneous unity of the people transcends the political boundaries of member states and replaces the equilibrium between the federation and the politically independent member states with a general unity."[4] Both Hamilton and Madison anticipated (and hoped) that this unity would be to

2. Robert D'Amico and Paul Piccone, "Introduction" to a *Telos* issue devoted to federalism. See *Telos* 91 (Spring, 1992), p. 4. D'Amico and Piccone's history is in need of correction as well. See, for example, Forrest MacDonald, *Novo Ordo Seclorum: The Intellectual Origins of the Constitution*. (Lawrence, Kansas: University of Kansas Press, 1985) and William Lee Miller, *The Business of May Next: James Madison and the Founding*, (Charlottesville, Virginia: University Press of Virginia, 1992).

3. For a pro-slavery argument which illustrates this point, see George Fitzhugh, *Cannibals All! Or Slaves Without Masters* (Cambridge: Harvard University Press, 1960). For a discussion of this issue during the Constitutional Convention, see Miller, *op. cit.*, pp. 117-141, 178-179.

4. Carl Schmitt, "The Constitutional Theory of Federalism," *Telos* 91 (Spring, 1992), p. 54.

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some extent the long term outcome of a successful American union. Madison personally favored the new constitution giving the general government the right to veto any state law, and obviously believed such a power in no way violated federal principles. Hamilton said, "I believe it may be laid down as a general rule that [the people's] confidence in and obedience to a government will commonly be proportioned to the goodness and badness of its administration." Revealingly, he added that "Various reasons have been suggested in the course of these papers to induce a probability that the general government will be better administered than the particular governments. . . I will . . . hazard an observation . . . that the more the operations of the national authority are intermingled in the ordinary exercise of government, the more the citizens are accustomed to meet with it in the common occurrences of their political life, the more it is familiarized to their sight and to their feelings, the further it enters into those objects which touch the most sensible and put in motion the most active springs of the human heart, the greater will be the probability that it will conciliate the respect and attachment of the community. . . The inference is that the authority of the Union and the affections of the citizens towards it will be strengthened rather than weakened, by its extension into matters of internal concern. . ."[5]

Madison observed: "If . . . the people should in [the] future become more partial to the federal than to the State governments, the change can only result from such manifest and irresistible proofs of a better administration as will overcome all their antecedent propensities. And in that case, the people ought not surely to be precluded from giving most of their confidence where they may discover it to be most due. . ."[6]

Hamilton and Madison rested their case for federalism on a democratic republican foundation. They both preferred that the central government be given more authority over taxes than in fact it was. Yet Madison is rightfully regarded as the American theorist of federalism, although usually this judgment ignores his evident lack of concern with growing national supremacy over the states. Madison's anti-federalist critics adopted the rhetoric of "states' rights," which he opposed. Only people have rights, states have no rights. This was why Madison and Hamilton emphasized that "the people" rather than "the states" would adopt the Constitution. However, they had a much more subtle sense of how "the people" are comprised than is usually the case in democratic theory.

5. *The Federalist* 27.
6. *The Federalist* 46.

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Madison argued that "assent and ratification is to be given by the people, not as individuals composing one entire nation, but as composing the distinct and independent States to which they respectively belong. It is to be the assent and ratification of the several States, derived from the supreme authority of each State — the authority of the people themselves."[7] The people exist in two capacities: as citizens of respective states and as citizens of the nation as a whole.

In this way both Madison and Hamilton sought to reconcile the independent states of the Articles of Confederation with the national government they prefigured. It is not going beyond their meaning to say that "the people" also comprise the polity over time. No single election could yield control of the national government. At a minimum, it would take two elections to change a majority of Senators since one third are elected every two years. Even in this case the Supreme Court could still stand as a barrier to rapid and precipitate changes in basic policy. Nor could the Constitution be easily or quickly amended without overwhelming public support for change.

Because the people existed over time, their interests were best represented in large and highly complex polities which made any simple polling of opinions a difficult task at best. The most un-American way possible of designating the people is "the masses" for, in fact, it is no mass at all. The people constitute a complex unity whose intricate internal structure and differentiation is occluded by such crude terminology. Madison's classic statement of this view was in Federalist 10 and recent research has suggested it is even more complex a unity than he envisioned.[8] The people were not simply a collection of individuals, they were the society as a corporate entity extending over time — "the ages" the Founders hoped.

The foundation of American federalist theory in popular sovereignty rather than on the sovereignty of the states or the nation as a whole marked a major innovation in political thought. By comparison, the thinking behind the Confederate Constitution marked a giant step backwards — even without taking the issue of slavery into account. The Confederate Constitution was not a "restoration" of constitutional principles supposedly violated by the North, but rather a rejection of them and a return to

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7. *The Federalist* 39.

8. See, e.g., Benjamin I. Page and Robert Y. Shapiro, *The Rational Public: Fifty Years of Trends in American's Policy Preferences* (Chicago: University of Chicago Press, 1992) and Gus diZerega, "Elites and Democratic Theory," in *Review of Politics*, 1991, pp. 340-372.

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an older view that federal unions arose from the coming together of sovereign states.[9] The Confederacy was exactly the sort of federation which Madison and Hamilton described (in Federalists 18, 19, and 20) as ultimately doomed to failure.

The complex concept of popular sovereignty Madison and Hamilton were developing led to a profound break with earlier ways of conceiving political power. According to the Founders, the people themselves belong to *more than one* political community, and no single such community enjoys theoretical precedence over another. The model of relations between the state and general governments which the Founders described is not hierarchical, even if they personally would have preferred it to be so. Indeed, they were at a loss of words for what they were describing. Madison pointed out in *The Federalist* 39 how every major aspect of the Constitution possessed both "federal" and "national" aspects. Later, in 1824, he wrote: "It is a system of government emphatically *sui generis* for designating which there consequently was no appropriate term or denomination pre-existing." In 1831, he still argued: "the Gov't of the U. S. being a novelty and a compound, had no technical terms or phrases appropriate to it, and . . . old terms were to be used in new senses, explained by the context or by the facts of the case."[10]

Theory from Practice

Since the Constitution grew out of compromises and hard bargaining, it may be considered a bit fanciful to read a coherent theoretical framework into a document regarded by Madison and Hamilton alike as deeply flawed. But such is not the case. Compromises can take two forms. First, the different parties can come to an agreement upon rules for cooperation which they regard as generally *fair*. Because their interests will differ and occasionally clash, fair rules will have to be procedural, like the rules of a game which seek to give no particular advantage to any player at the outset. Alternatively, the compromise can seek to safeguard particular interests in advance, by giving them a *privileged* position. The Constitution mostly

9. See Roy Franklin Nichols' discussion of the provisions of the Confederate Constitution in his *The Disruption of American Democracy* (New York: Collier, 1962), pp. 462-463.

10. James Madison to Robert S. Garrett, February 11, 1824, *Works*, Vol. IX, p. 177; Madison to N. P. Truist, December, 1831, *Works*, Vol. IX, p. 475; see also Madison to Edward Everett, August 24, 1830, pp. 384-85; Madison, "Notes on Nullification," in *Mind of the Founder: Sources of the Political Thought of James Madison*, Marvin Meyers, ed. (Hanover: University Press of New England, 1981), p. 437.

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exemplifies the first sort of compromise. The second kind can be found in the provision prohibiting the national government from banning the slave trade for ten years. Other privileges incorporated into the document, such as giving the vote to men and the weighted representation given slave states in the House of Representatives, were susceptible to amendment. As suffrage was widened, these privileges were removed, further strengthening the Constitution's purely procedural character.

Procedural rules for action that apply to a wide variety of interests on the basis of fairness carry their own internal logic. This logic was adapted and developed by Madison and Hamilton, even if they were not personally enamored by all its provisions. The internal logic of such a system of fair procedural rules results in a *self-organizing system* — a concept largely lacking at the time they wrote.

Self-Organization

It is ironic that the principles necessary to make theoretical sense of America's federalism were first extensively discussed in the year 1776, not in the New World, but George III's England. Adam Smith's *Wealth of Nations* was the first major study of social self-organizing processes.[11] Smith's subject, of course, was the rapidly developing market economy. But with the advantage of over 200 years of hindsight, we can see that the market is in fact a special instance of a broader process which was transforming societies of Western Europe and North America. This transformation rendered their basic institutions increasingly incapable of being grasped by traditional ideas about instrumental organization, status, and hierarchy. The modern West has been characterized increasingly by the dominance of the self-organizing systems of the market, science, and liberal democracy. *The modern age is not so much the age of organization as of self-organization.*

Smith and subsequent economists showed how orderly social processes could arise out of individuals pursuing personally chosen, and often narrowly defined purposes by means of abstract procedural rules of contract within a framework of clearly specified property rights. The result was a complex and ever changing network of economic coordination able to handle more information and harmonize more diverse aims

11. Although its roots are in Hume. Also see F. A. Hayek, "The Legal and Political Philosophy of David Hume," *Studies in Philosophy, Politics, and Economics* (New York: Simon and Schuster, 1967), pp. 106-21. Hume was also a pioneering thinker on federalism who significantly influenced Madison. See Miller, *The Business of May Next*, *op. cit.*, pp. 55-60.

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than could ever be the case by consciously attempting to organize the whole from a single center.

Unlike instrumental organizations, the market pursued no specific goals or hierarchy of goals. This meant that, strictly speaking, no guarantee existed that any particular project would be attained. However, this same process increased the likelihood that any randomly selected participant's goals would more likely be attained within a market order than would be the case if all economic transactions took place within the framework of an instrumental organization.

As with other self-organizing social institutions, the market places minimal demands upon the knowledge and judgment of its participants. A feature of self-organizing systems is that they economize enormously on the knowledge people need in order to act within them. No one needed an overview of the whole in order for a coherent framework of relations to arise within which people could cooperate — even with strangers whom they would never meet. No one needed a view of the whole in order to successfully attain their ends and in so doing assist others in attaining theirs. As Hayek, the most important theorist of social self-organization, pointed out: "The whole acts as one market, not because any of its members survey the whole field, but because their limited individual fields sufficiently overlap so that through many intermediaries the relevant information is communicated to all."[12] Thus it became easier for individuals to cooperate in increasingly intricate networks ultimately spanning the globe. A much greater complexity of information and relations could be integrated within a market order than could ever be the case within an instrumental organization.

The very complexity of such interactions make its order impossible to grasp without the aid of theory. Too many factors are integrated in a continuing kaleidoscope of change for anyone to be able to understand them in their particulars. Yet, acting within a self-organizing system it is easy to use local manifestations of this order. One need not be an economist to act effectively within the market, even if it is helpful to study economic theory to understand how the market works.

All self-organizing social processes possess basic characteristics which differentiate them from instrumental organizations. Four are particularly important: they are unusually open, complex, they have logical depth, and it is impossible to make predictions about their future specific characteristics (although "pattern predictions" are possible).

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12. F. A. Hayek, "The Use of Knowledge in Society," in *Individualism and Economic Order* (Chicago: University of Chicago, 1948), p. 86.

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Strictly speaking, all social systems are open, but generally they may be relatively open or closed. A hierarchical instrumental organization is relatively closed, for there is only one legitimate center for decision making and innovation. Thus all external influences impinging upon the system must be brought to the attention of the top leadership or to those to whom limited authority to act has been expressly delegated if the system is to respond effectively. By contrast, a self-organizing social system possesses multiple centers for innovation and decision making. Each is relatively independent of the others. Each is free to interpret and act on its own. The system can respond at any point to any influence seen and acted upon by any participant. A hierarchical organization will seek to maintain strong boundaries, limiting the impact of external influences, in order to protect itself and successfully pursue its goals. A self-organizing system possesses very permeable and open boundaries for it has no goals or purposes requiring defense against outside influences.

This leads to a second distinguishing characteristic of a social self-organizing system: its *complexity.* In a hierarchical organization decisions are made by one or a few individuals. Consequently, there is a clear limit to the complexity an organization can develop, beyond which it becomes too complicated and unwieldy to manage effectively.[13] In a self-organizing social system there is no theoretical limit to the complexity of the relations within it. Each participant has limits, of course, just as do the leaders of an instrumental organization. But there is no limit to the number of possible participants, and so long as each overlaps with the others the intricacy of the whole can grow. Each person has different information, desires and plans, and confronts the same event from a unique perspective. Insofar as these differences are incorporated into a self-organizing process, its capacity to use diverse data dwarfs that of a hierarchical organization.

The enormous complexity of social self-organizing systems means they possess tremendous logical depth. This term, which originated in information theory, addresses the quality as well as the quantity of information needed to specify a particular system. In an organized system the quality of information is determined by the time needed "to compute the message from the shortest program that will generate it."[14]

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13. Richard N. Langlois, "The Capabilities of Industrial Capitalism," in *Critical Review* (Fall, 1991), pp. 513-30. See also John Kotter, *A Force for Change: How Leadership Differs from Management* (New York: MacMillan, 1990).

14. Paul Davies, *The Mind of God: The Scientific Basis for a Rational World* (New York: Simon and Schuster, 1992), p. 137. See also Charles Bennett, "Dissipation, Information, Computational Complexity and the Definition of Organization," in D. Pines, ed., *Emerging Syntheses in Science* (Boston: Addison-Wesley, 1987).

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Manifestly: "Simple patterns are logically shallow, because they may be generated rapidly by short and simple programs. Random patterns are also shallow, because their minimal program is, by definition, not much shorter than the pattern itself. . . . But highly organized patterns are logically deep, because they require that many complicated steps be performed in generating them."[15]

Far from being random or disorganized, the "anarchy of the market" and other social self-organizing systems constitute the most intricate achievements of human society. One important implication following from this is that social self-organizing systems are perhaps the most valuable creations of human cooperation. Shallow systems, lacking logical depth, easily can be reconstructed, whereas self-organizing systems possessing great logical depth cannot, and creating new ones is no easy undertaking (as Eastern Europe is discovering). That it can be done at all is because the rules which generate social self-organizing systems, particularly those characterizing liberal modernity, are remarkably simple. Indeed, they are simpler than the rules characterizing most instrumental organizations. Because they apply to all while leaving everyone free to apply them as they see fit, they are purely procedural, open to any purposes which may be encompassed by them. By contrast, instrumental organizations tend to create specific rules covering specific contingencies. They are justified in terms of their ability to aid the organization attain its goals.[16]

As a result, it is impossible to predict the specific characteristics of any particular self-organizing system. All that can be done is to make what Hayek calls "pattern predictions," saying nothing about their specific details. As Hayek noted: "The range of phenomena compatible with [such predictions] will be wide and the possibility of falsifying it correspondingly small." He added: "While it is certainly desirable to make our theories as falsifiable as possible, we must also push forward into fields where, as we advance, the degree of falsifiability necessarily decreases. This is the price we have to pay for an advance into the field of complex phenomena."[17]

The market is not the only self-organizing social system which has

15. *Ibid.*, p. 138.

16. Thus the *Forest Service Manual* is many volumes in length, adding up to many hundreds of pages. The US Constitution is only a little over 100 paragraphs. A classic study of such an organization and its many hundreds of pages of rules is Herbert Kaufman, *The Forest Ranger: A Study in Administrative Behavior* (Washington, D.C.: Resources for the Future, 1986).

17. See F. A. Hayek, "The Theory of Complex Phenomena," *Studies in Philosophy, Politics, and Economics*, *op. cit.*, p. 29.

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transformed the world. Liberal modernity's other two most unique institutions, science and democracy, are also. The scientific community is able to make use of and constantly revise and enlarge a body of knowledge exceeding the capacity of any scientist precisely because of science's self-organizing nature. Scientific knowledge gains its coherence because the community of practicing scientists pursues their research while honoring a small number of purely abstract and procedural principles. These principles are often described as the "scientific method," though it is not such a tidy package as this term suggests.[18]

Democracy as a Self-Organizing System

Liberal democracies also share these same general characteristics. Citizens participate in politics by following a small set of abstract and procedural rules which determine how they are to act politically if they want to be involved. Being abstract, these rules apply equally to all, although their impact upon specific individuals can and will vary. Being procedural, they are silent as to the particular political goals citizens may wish to pursue. Often these rules will govern pursuit of mutually exclusive political projects, just as in the market and science. This is how competition arises in self-organizing systems. The rules which generate a liberal democracy are freedom of political speech, freedom of organization, free elections, and equality of the vote.[19]

"Self-Organizing" should not be confused with "self-governing," as Ostrom does when he writes "Self-organizing capabilities exist at the village level in all societies."[20] Yet the broader picture he develops is of federalist democracies as self-organizing polities. A village's political life

18. Even more than Hayek, Polanyi deserves to be considered the father of contemporary social self-organization theory. With regard to science, see his *Logic of Liberty*, *op. cit.*, and "The Republic of Science: Its Political and Economic Theory" in Marjorie Grene, ed., *Knowing and Being: Essays by Michael Polanyi* (Chicago: University of Chicago, 1969), pp. 49-72. John Ziman has continued Polanyi's work. See particularly his *Public Knowledge* (Cambridge: Cambridge University Press, 1968) and *Reliable Knowledge* (Cambridge: Cambridge University Press, 1978). See also David Hull, *Science as a Process: An Evolutionary Account of the Social and Conceptual Development of Science* (Chicago: University of Chicago Press, 1988).

19. For a more extensive discussion of democracies as self-organizing systems, see Gus diZerega, "Elites and Democratic Theory," in *The Review of Politics* (Spring, 1991) pp. 340- 372; "Democracy as a Spontaneous Order," in *Critical Review* (Spring, 1989) pp. 206-240; "Liberalism and Democracy: Spontaneous Order, Information, and Values," Wirtschaft's *Politische Blätter: Friedrich August von Hayek zum 90, Geburtstag*, Vol. 36, (Vienna: Bundeskammer der Gewerblichen Wirtschaft, 1989), pp. 158-169.

20. Ostrom, *Meaning of American Federalism*, *op. cit.*, p. 213.

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consists largely of face-to-face relations. As such, it can be self-governing. The concept of "self-organization" refers to those social processes characterized by *complexity* — where no person or group can grasp much about the system as a whole, except in a formal abstract sense. Order must rely on impersonal processes, independent of the particular wishes and desires of participants, no matter how much their actions may contribute to these processes. Self-governance, however, means that the numbers have a significant say in the outcomes of particular political processes.

Yet self-governance and self-organization are not opposites. In fact, in a complex order, self-governance can exist at the local level *only if* the broader features of the political system are largely self-organizing (or, alternatively, central government ignores local events). This relation has parallels in science and the market. It is the largely impersonal market process which enables people to have such latitude in pursuing their self-chosen goals economically. It is the largely impersonal scientific community as a whole which enables individual scientists to choose and pursue their research. If either of the two were chaotic, it would be hard to know what avenue of pursuit promised to be productive. Were either an instrumental order, local plans would have to be harmonized with those laid down by higher authority. The same is the case in democracies. Self-governance and self-organization in complex orders are different sides of the same coin.

Because their rules apply to everyone, all self-organizing social systems are *equalitarian*. Since these rules are purely procedural and say nothing about who will use them or how successful they will be if they do, some people will be more successful in achieving their plans than others. Therefore, rules able to generate a democracy cannot be egalitarian. They cannot lead to identical outcomes for all who act within their framework. In a complex order, a rule cannot be both equalitarian and egalitarian. At the systemic level, procedural rules serve primarily to discover and coordinate what is unknown. Consequently, when they are followed, there is no guarantee for any particular outcome. Inequality of input and outcome is unavoidable.

The general outcome served by well-functioning democracies is the public good. This often misused term can be better understood by first examining its equivalent in economic theory. The theoretical ideal the market process is supposed to approach is called general equilibrium. It is the state of affairs that would exist if, as Hayek put it, everyone operating within a market order enjoyed perfect knowledge. Hayek preferred the term "order" for "equilibrium" because it "has the advantage that we can meaningfully speak about an order being approached to various degrees,

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and that order can be preserved throughout a process of change."[21]

The market generates a coordination process which approximates this never-to-be-perfectly-attained and always changing state of affairs of perfectly coordinated knowledge. Thus the market process is fundamentally a discovery process. If in its capacity to coordinate cooperation were to decline , i.e., its capability to make knowledge available to those who can use it effectively, its ability to self-organize would also. Fewer people would be able successfully to pursue their plans within its framework.

Science has an equivalent concept, also based on a standard of perfect coordination and knowledge. This is universal agreement among scientists about the nature of the phenomena able to be studied scientifically. Science is a process by which scientific knowledge — knowledge able to be justified and defended by the scientific method as interpreted by the scientific community — is discovered. As with the market process, this perfect agreement is an unattainable ideal, but it is the attempt to achieve it which allows the positing of a body of scientific knowledge at all. Both science and the market are discovery processes.

In democratic politics the public good is the same sort of concept. It, too must be discovered. Often the public good is considered to be some specific state of affairs or hierarchy of ends which "the people" are supposed to favor. This misconstrues its nature. Beyond the most general formulations, there is substantial disagreement as to what measures are or are not in the public good. Given the enormous complexity of contemporary political issues, any reasonable person would admit to considerable uncertainty as to what specific programs will be most in keeping with the public good. This has lead some political scientists to deny that the concept carries any theoretical or practical weight at all.

From the perspective of a theory of self-organization, the public good is that assortment of public policies which would be adopted by perfectly knowledgeable citizens agreeing unanimously among themselves when asking themselves "What is best for the community in which I live?" As with general equilibrium and the scientific ideal of perfect agreement, the political process should always generate an impetus approaching such circumstances, even though there is no reason to believe it will ever be completely attained. This is particularly the case here because the public good incorporates, in principle, all of what counts as scientific knowledge and the

21. F. A. Hayek, "Competition as a Discovery Procedure," in *New Studies in Philosophy, Politics, Economics, and the History of Ideas* (Chicago: University of Chicago, 1978), p. 184.

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structure of the market, plus much more. In terms of specific policies, the public good will be a moving goal whose content is only partially known.

This concept of the public good, and the Founders' observation that we live in more than one political community, provides a different basis for applying federalist principles than do traditional theories. Further, it is one in harmony with democratic principles. As Madison and Hamilton stressed, citizens often think of themselves as belonging to more than one political community. In thinking so, they make it so. Further, the complexity of public issues renders no single political community equally capable of addressing all issues effectively, from street maintenance to education and national defense.

Indeed, Madison's argument in favor of extended republics incorporating a great variety of factions and interests is basically one that stable and just democracies must be established in complex societies. It is their complexity which prevents a majority faction from arising and turning the polity into an instrumental organization dominating its members for the enrichment of its rulers, which would constitute a *coup d'état* by the majority against the polity. Complexity takes many forms in an extended republic. Insofar as it is territorially based, the case for federalism is implicit within democratic republican theory.

At the root of many contemporary conflicts over public policies and the institutions that produce them are differences of a more fundamental kind. Some see democracy as an instrumental organization designed to secure substantial goals, such as greater equality of condition.[22] Others envision democracy as enabling people to get together to decide what to do, i.e., of facilitating procedures. Central to those procedures is that they apply to all citizens equally. Procedural equality is predicated on equal legal respect for all citizens. Thus equal opportunity leads to unequal results. If one insists upon substantive equality of resources as necessary for legitimating democratic institutions, neither American nor any other kind of democracy can qualify.[23] Worse, if agreement on policy is required for agreement on procedures, democracies will be chronically unstable because under such a requirement they will be incapable of approaching the public good. They will not promote the political cooperation of all citizens.

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22. See Robert Dahl, *Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956), p. 56; and *Dilemmas of Pluralist Democracy* (Berkeley: University of California Press, 1982), pp. 84-5. 107.

23. Gus diZerega, "Equality, Self-Government and Democracy: A Critique of Robert Dahl's Political Equality," in *Western Political Quarterly*, Vol. 41, No. 3, pp. 447-468.

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The Constitution and the Articles of Confederation

From a perspective enriched by the theory of self-organizing social systems, both the Constitution and the Articles of Confederation which it replaced offered potentially viable frameworks for a large-scale democratic order. However, the reasons supporting each differ, and insights derived from both are of relevance today.

The Constitution created a federal polity where the people were conceived as citizens of at least two political communities, neither of which could lay sole claim to speak for "the people." This was not the case with the Articles, where independent sovereign states came together for certain common purposes. The central government could not act except through the states. Any measure passed by the Continental Congress required nine of thirteen states to agree, and delegates were more ambassadors than independent decision makers. Amending the Articles required unanimity.

The Articles established a great deal of political equality among the separate states, and all their citizens enjoyed rights to travel and trade. Each state recognized the same privileges and immunities for the citizens of other states as they did for their own. All maintained reciprocal respect for extradition and judicial proceedings.

The Articles were established during the crisis of the Revolutionary War. In the eyes of many, with the coming of peace much of the need for closer relations dissipated. Quorums became increasingly hard to obtain. Attempts to give the Congress independent taxing authority failed. Amendments were all but impossible to pass. When John Hancock was elected President of the Congress he never even bothered to show up to take office.[24] Had the Articles persisted, the Confederation not been dissolved due to foreign entanglements or dissension between the states, and had the new governments remained basically democratic, over time a stronger sense of national community would probably have grown again. Unlike earlier confederations, however, the Articles created a framework with substantial self-organizing capabilities.

Where the Articles differed from earlier confederations was that the members states were all democratic in the sense that most white men could vote. Only to the extent that the member states were democratic (particularly in the North) did the Articles create a self-organizing framework. The reason is, when both internal and external relations are based

24. On the Articles see Gordon Wood, *The Creation of the American Republic, 1776-1787* (New York: Norton, 1972), pp. 354-63; and Forrest MacDonald, *The Formation of the American Republic: 1776-1790* (Baltimore: Penvin, 1967).

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upon procedural rules applying equally to all, the same self-organizing processes existing within each state will progressively blur the boundaries they have with their neighbors. The distinction between internal and external relations will progressively diminish as trade and travel increase, leading to ever more economic and cultural interpenetration. Identification with one's own state, and particularly with its leadership, will be diluted by other loyalties. This is precisely what is happening today among sovereign democracies in Europe, and increasingly in other parts of the world as well.

It is the strength of these and related processes which shed light on why self-organizing polities act differently within the international arena than do undemocratic ones. This explains why liberal democracies, alone of all forms of government, do not war with one another, have mutually demilitarized borders, and tend to be more cooperative within international organizations. Given these characteristics of the new confederation, so long as they remained democratic the fears of Hamilton and Jay that the states would ultimately recapitulate the miseries of European warfare were probably overblown. However, it takes time for a society to be transformed by self-organizing processes. Old habits had to change. The first decades would have been the riskiest. Certainly anti-federalist sentiment was strongest in the least developed portions of the states. Even today political scientists have only begun to appreciate the peaceful characteristics of democratic polities, so it is hard to fault Hamilton and Jay for being mistaken about something political scientists 200 years later have only begun to appreciate. When Hamilton wrote "Let experience, the least fallible guide of human opinions, be appealed to for an answer to these inquiries,"[25] there was no experience of an international system of self-organizing polities. Western Europe today is perhaps the best example.[26]

That the Articles might in the long run have proven adequate to their task does not mean that it was a mistake to adopt the Constitution. The central weakness of the new nation — its incorporation of free and slave states — would have bedeviled the Confederation as well. In such a case, the ultimate problems might have been worse, for the Constitution

25. *The Federalist* 6

26. Despite even greater cultural, historical, religious, and linguistic differences than were the case with the original thirteen American states, Western Europe has been evolving towards ever greater integration economically and judicially. This example suggests the transformative power inherent within societies where self-organizing characteristics have become dominant in overcoming barriers which once separated them.

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allowed the slave trade to be abolished in 1808. Under the Articles, it may have continued much longer. The Constitution also solved the dangerous and divisive problem of overlapping land claims by various states, eased admission of new states, guaranteed their democratic republican character, and adopted a Bill of Rights (which many member states of the time did not have). The Constitution also provided a more sophisticated framework for a self-organizing order because it institutionalized more than a single political community, whereas most of the states adhered to a unitary concept of political power.

What is striking about the debates between the Federalists and the Anti-Federalists today is the seemingly prophetic utterances of the latter when they warned of the threat of a large centralized state.[27] Before becoming overly impressed with their prescience, however, it should be recalled that it took over 140 years from the Constitution's adoption to the beginning of the New Deal for such a state to begin to take decisive shape. The Anti-Federalists thought the problem was just around the corner. When centralization did begin in earnest, the large national government enjoyed substantial and prolonged popular support. It was not imposed on a largely unwilling country, as the Anti-Federalists predicted.

Even if the Articles had been maintained, similar development may have taken place in one of two ways. Precisely because self-organizing processes, economic and political alike, tend to enlarge and integrate the community, even a nation formed on the Articles would likely have come in many respects to resemble what obtains today — including the possibility of a substantial welfare state. Nothing could be more plain as a limitation on governmental power than the 9th Amendment that "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[28] This is particularly the case when read in conjunction with the 10th Amendment: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Yet they did not prevent centralization and consolidation.

Even very small European democracies have established extensive welfare states. Denmark, with just over 5 million citizens, and Sweden, with nearly 8 and one half million, have proven capable of establishing

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27. See Herbert J. Storing, ed., *The Anti-Federalist* (Chicago: University of Chicago Press, 1985) and Ralph Ketcham, ed., *The Anti-Federalist Papers and the Constitutional Convention Debates* (NY: Mentor, 1986).

28. See Randy Barnett, ed., *The Rights Retained by the People: The History and Meaning of the Ninth Amendment* (Fairfax, Virginia: George Mason University Press, 1989).

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welfare states far more ambitious and inclusive than the one existing in the US. It is wishful thinking to argue that a US with greater state autonomy would have avoided such an outcome on that basis alone. Joyce Appleby suggests that adopting the Constitution actually inhibited the rise of powerful welfare states at the state and national levels.[29]

Finally, even had the Constitution not been adopted, sooner or later the issue of how to order an extended republic incorporating a complex and diverse community of interests would still have needed to be addressed. The larger states would have faced this problem as their population grew. In 1790 the entire population of the United States was just under 4 million, smaller than Denmark, but slightly larger than Kentucky today. In fact, the US population in 1790 was approximately that of the San Francisco Bay area in 1990. The issues the Founders addressed would have had to be addressed, and it is unlikely they would have been addressed better. The tendency of state constitutions to try and safeguard specific special interests suggests that a new Constitution would be inferior to the present one.

In short, rehabilitation of many aspects of the original Articles of Confederation need not undermine the case for the Constitution and the reasoning developed in its defense at the time. However, today might be a more propitious time for self-organizing frameworks established along the lines of the Articles because several of the worst threats that could have torn the federation apart early on are now all but absent. Today's democracies recognize one another's boundaries and they are now the strongest economic and military powers in the world. Their societies have now been fundamentally transformed by self-organizing processes, something only in its incipient stages in the early American states. The longer a polity is ordered primarily by self-organizing processes, the more fundamentally it diverges from those which are not.

Polycentric Communities

A democratic polity of any considerable size necessarily constitutes more than a single political community. A political community may be defined in terms of the main political relations among its members. Democratic political communities are defined by equalitarian political relations within a given territory. The size of the territory can vary, however,

29. Joyce Appleby, "The American Heritage — The Heirs and the Disinherited," in *Liberalism and Republicanism in the Historical Imagination* (Cambridge: Harvard University Press, 1992), p. 220.

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and this will affect the community's ability to deal with various types of political issues. Given that no single size is optimal for all legitimate political purposes, the common good of a democracy will necessarily be a complex affair. Some specific characteristics will apply to the polity as a whole, whereas others will apply to smaller democratic units within it. The more complex and diverse the polity, the greater the likelihood that federal principles will be necessary to serve the common good.

A self-organizing model of democracy implies at least a minimal federal principle. There are those matters most appropriately decided by the people directly within small face-to-face communities, and those matters best addressed by more inclusive representative bodies. This minimal model may be best suited for very small independent polities, such as Iceland, Liechtenstein, and Luxembourg, all of which have well under one million citizens.

Most liberal democracies far exceed these polities in population, diversity, and complexity. The greater the population the more complicated the task of serving the public interest. The more diverse the population, the greater the possible disagreements about the values, particularly the relative ordering of values, to be served by public policy. Complexity refers to the division of knowledge within a society. Greater complexity means greater diversity of knowledge and therefore the more complicated the social field within which public proposals have to be enunciated, gather support, and emerge to policy.

Countries with diverse populations will stand in greater need for federal structures than will countries of similar size but more homogeneous populations. For example, Switzerland and Denmark are both quite small. Switzerland has a little over 6,600,000 citizens and Denmark about 5,100,000. Their physical territories are also quite small. Denmark, however, is ethnically homogeneous, while Switzerland is unusually diverse, including German, French, Italian, and a small Romansch speaking population. Although each is a political community with a genuine public good, the public good of the Swiss is more complicated than that of the Danes. At a minimum it must seek to respect and harmonize the different Swiss linguistic groups. It is unlikely that Switzerland could exist without its federal system allowing for substantial cantonal autonomy. The German-speaking Swiss make up the largest portion of the population. They would dominate any unitary Swiss state. French and Italian speaking cantons border on France and Italy. Were Switzerland a unitary state, this situation would very likely be unstable. Whenever the French and Italian

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speaking portions of the country felt aggrieved, they would be tempted to switch allegiance to countries where their language was dominant.[30]

These first two reasons for federalism are easily grasped. The third is more abstract. Complexity and the division of knowledge are important, but hard to grasp. The Middle Ages is often considered a time of enormous complexity, as social and political units were small and dialects and ethnic identity varied dramatically over small distances. But these elements are not central to the social division of knowledge. In other respects, compared to today, the Middle Ages were homogeneous. The dominant religion was Catholicism. The small number of educated people not only spoke the same language, Latin, they also read pretty much the same material. At the local level economies were simple, and variation in technical knowledge from person to person was far less than it is today. In such a society the ideal of a "Renaissance Man" was not only be appealing, but attainable.

Today the portion of knowledge a person has, compared to what is needed to sustain the contemporary world, is infinitesimal. Complex interconnected economies generate problems as fast as they solve them. Many of these problems are relatively unique to modern times. What constitutes adequate solutions for them is often controversial and proof for what does or does not work is hard to come by. Yet a viable public policy must tend to use this information necessary to address these shifting and uncertain issues.

A comparison with the market and science is useful. Both orders could function if relevant actors were all large organizations, and there were only a few in each area of production or interest. But internal organizational politics favors the *status quo* and existing leadership. Such market and scientific orders would be relatively slow to adjust to changes from outside and would tend to repress changes from inside the system. It would "self-organize" slowly and hesitantly. As the number of active participants increases, there would be an expanding opportunity for someone to take advantage of new insights and promote new avenues of production or research. The order would become more quick to adapt and more creative in its activity.

Today both science and the market tend to have many independent participants, linked together by the self-organizing process within which

30. Leopold Kohr provides important insights as to why the Swiss federation has worked so well while many other federations broke down or were taken over by a dominant member. See *The Breakdown of Nations*, (London: Routledge and Kegan Paul, 1957).

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they operate. In democratic politics the norm is quite different, with many participants forced to act within the orbit of only a relatively few large institutions. To the extent that federalism exists, more avenues for creative action are opened up, and the process can make more effective use of the dispersed and complex knowledge of its citizens.

In short, federalism increases the opportunities for successful political entrepreneurship.[31] Entrepreneurial action is the source of all coordination and much change within self-organizing systems. Entrepreneurs take advantage of opportunities they see to act within the system, by its rules, to gain their ends. In doing so they continually adjust the circumstances around them to take advantage of changes they perceive or anticipate, and in turn, they will change the conditions for other people, creating new entrepreneurial opportunities.[32] This is why self-organizing systems do not settle down towards perfect coordination of knowledge and plans. Usually the ends entrepreneurs pursue will include amassing more *systemically defined* resources. In the market economy money is the primary systemic resource; the more of it one has, the more avenues of participation are opened up. In science, reputation and renown count for more than money. Those scientists most recognized as creative contributors to their field will have the most influence. Political entrepreneurs will also generally seek to amass political influence and reputation.

With regard to federalism, political entrepreneurship has two dimensions. First, a multiplicity of governments addressing similar problems at a similar scale enlarges the likelihood for successful innovation and discovery, even within relatively homogeneous societies. In the US, many innovations at the state level have later been adopted at the national level. In addition, often public programs and policies are such that it is difficult to determine whether they are failures or whether the issues they address are simply intractable. Unlike scientific theories or market ventures, winnowing out failures and determining how to improve existing programs is relatively difficult. Perhaps more than with these other self-organizing orders, the powerful interests that develop in favor of any particular *status*

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31. Robert Dahl, *Who Governs? (*New Haven: Yale University Press, 1961), p. 227.

32. This model has been most completely worked out in economic theory. See F. A. Hayek, "Coping With Ignorance," in *Imprimis*, Vol. 7, No. 7, 1980, p. 4; Ludwig Lachmann, *The Market as an Economic Process* (Oxford: Basil Blackwell, 1986), p. 124; Jack High, "Equilibrium and Disequilibrium in the Market Process," in Israel Kirzner, ed., *Subjectivism, Intelligibility, and Economic Understanding* (New York: New York University Press, 1986), pp. 113-119; Ulrich Fehl, "Order and the Subjectivity of Expectations: A Contribution to the Lachmann-O'Driscoll Problem" also in Kirzner, pp. 72-86.

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quo can use these ambiguities to maintain their position. Multiple points for innovation increase the likelihood that improvements will be discovered and failures abandoned. This observation applies at every level of the political community, from face-to-face democracy to state and provincial politics, and even nation-states.[33]

Second, it may not always be clear at what level or scale of inclusiveness a given problem is most effectively addressed. Therefore, relative freedom of action within each political community is desirable. There has been a historical tendency for higher levels of authority gradually to diminish that of lower levels, usually well beyond the point the requirements of efficiency demand. For example, while small European nations, such as Denmark, have proven capable of initiating and maintaining a wide variety of social measures, much larger American states are prohibited from exercising much innovation or initiative in these areas. Similarly, many urban programs cease benefiting from economies of scale once they serve a population equivalent to a small town. Nevertheless, they are administered in standardized forms over large populations by centralized bureaucracies.

Issues tailor-made to particular political boundaries do not usually arise. Jurisdiction is intrinsically uncertain. But a general principle that would seem reasonable is that the smallest unit able to afford addressing a problem within its borders should have wide leeway in addressing it. More inclusive units can deal with neighborhood effects, but not in ways which seriously constrain the choices at more local levels. From this it follows that the more diverse the polity's constituent units, the more limited the prescriptive power of more inclusive units should be. However, their regulatory and enabling powers do not necessarily encounter such limits. A prescriptive power is the power to require particular actions regardless of their outcomes in particular cases. A regulatory power sets general goals and standards but does not specify the means for attaining these goals. An enabling power either redistributes resources, allowing a person or community to act effectively when it otherwise could not, or eliminates existing legal restrictions on others' actions in order to achieve the same purpose.

For example, if assistance to poor children were considered a desirable national goal, the national or state authority could require that every local authority develop a plan for minimal medical, educational, and other care, with the goal of turning them ultimately into productive and

33. See Martin Landau, "Redundancy, Rationality, and the Problem of Duplication and Overlap," in *Public Administration Review* (July/August, 1969), pp. 346-358.

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self-supporting members of society. Cities and counties could have primary responsibility for designing and implementing the programs. To avoid the problem of proliferating unfunded mandates, any level of government requiring another to meet standards would provide enabling funds equal to the "low bid" required to accomplish that goal. However, this argument hides a problem. "General standards and enabling" can be defined so broadly as to include prescriptive legislation, defeating the argument's intent. John Stuart Mill encountered the same problem when he tried to argue that liberty should be inviolate when an act influences only the person acting. In fact, *everything* we do impinges in some way on others. Crashing while riding a motorcycle without a helmet could cause extreme suffering for family and friends and, to the degree the rider was a breadwinner, economic suffering for a family and additional demands on the social services needed to support them. The principle suggested here can provide guidance only when legislation is considered as existing on a continuum extending from regulating general standards and enabling acts to prescriptive measures prescribing what to do and how funds are to be spent. National legislation should usually fall clearly on the general standards and enabling ends of the continuum.

To state this point differently, the more inclusive the political body, the more abstract should be its law-making — particularly when it limits the freedom of action of lower level communities. Abstract principles are general and as such allow for a variety of particular applications. Even so, as the Founders argued, paper principles, no matter how clearly enunciated (and this one cannot be clearly enunciated) cannot stand long against power unless it is in someone's personal interest to defend them. American states have consistently lost power and authority to Washington because Americans have come to identify themselves more as Americans than as residents of particular states. Further, in many instances states lost power because of abuses.

However convincing the theoretical rationale for federalism, if people identify primarily with their national government, over time, in a democratic system, that government will acquire ever more power at the expense of lower units of government. Those who still speak of empowering the states *vis-à-vis* Washington only betray their political and intellectual irrelevance. Hardly anyone will fight for their state against the nation, and so the states will never regain the authority they have lost. This means that federalism needs to be freed from over-dependence on the particular institutional form it has taken.

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Town Meetings

The most fundamental form of democratic self-governance is the democratic town meeting, which can only take place effectively within small communities. A Swedish study suggests that the maximum size for such a community is around 2600 for, beyond that size, citizens increasingly do not know who their town leaders are.[34] This number is not much different from Aristotle's recommendation of the ideal size for a Greek *polis*.[35] When a polity exceeds this size, the representative principle becomes increasingly important for maintaining effective government.

When visiting America, Tocqueville was impressed particularly with the vitality of town meetings in New England. He considered them an invaluable school in politics and inculcator of civic spirit. The New England township, he wrote "possesses two advantages which infallibly secure the attentive interest of mankind, namely, independence and authority. Its sphere is indeed small and limited, but within that sphere its action is unrestrained; and its existence gives it a real importance, which its extent and population may not always ensure. . . . without power and independence, a town may contain good subjects, but it can have no active citizens."[36] Tocqueville also perceived the deeper order underlying the confusing profusion of political bodies and projects in New England: "The appearance of disorder which prevails on the surface leads [the visitor] at first to imagine that society is in a state of anarchy; nor does he perceive his mistake till he has gone deeper into the subject."[37]

Tocqueville believed the foundation of a viable democratic civilization was self-government at the township level. In this he echoed Jefferson's earlier judgment. Jefferson was deeply impressed with the energy and strength of New England's tradition of town meeting democracy. Even though these small towns had complicated his own life while President, because they strongly opposed his policies towards England, he wanted to extend them to embrace the country as a whole. He termed this fundamental unit of democracy a "ward republic." In Jefferson's words: "These wards, called townships in New England, are the vital principle of their governments, and have proved themselves the wisest invention ever

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34. Robert A. Dahl and Edward R. Tufte, *Size and Democracy* (Stanford: Stanford University Press, 1973), pp. 62-65.

35. Aristotle. *Politics*. III. iii. 5, p. 98; and VII. iv. 13, p. 292, tr. by Sir Ernest Barker (Oxford: Oxford Univ. Press, 1958).

36. Alexis de Tocqueville, *Democracy in America*, Vol. I. (New York: Schocken Books, 1961), p. 62.

37. *Ibid.*, p. 90.

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devised by the wit of man for the perfect exercise of self-government, and for its preservation."[38]

Jefferson's ideal was a federal system which began at the township or small town level, where politics was face-to-face, and extended upwards to the county, state, and national levels. Each unit was to be responsible for those duties most appropriate to it. Wards were to provide their own elementary school, a company of militia with an elected officer, a justice of the peace and constable, take care of their poor, construct their own roads, provide their own police, elect one or more jurors to serve in the courts, and provide a means by which people could assemble and make their views heard.

Jefferson believed that, in the long run, simple voting was not enough to preserve a viable democratic order. Personal involvement was needed, not just on election day or during times of great abuse of power by corrupt representatives, but always: "Where every man is a sharer in the direction of his ward-republic, or of some of the higher ones, and feels that he is a participator in the government of affairs, not merely at an election one day in the year, but every day; when there shall not be a man in the State who will not be a member of some one of its councils, great or small, he will let the heart be torn out of his body sooner than his power be wrenched from him by a Caesar or a Bonaparte."[39]

Jefferson saw the principle of direct democracy as an important element within representative democracy. He acknowledged that representation must "be substituted where personal action becomes impractical. Yet even over these representative organs, should they become corrupt and perverted, the division into wards, constituting the people . . . a regularly organized power, enables them by that organization to crush, regularly and peaceably, the usurpations of their unfaithful agents. . . . " Ward democracies were necessary since "No other depositories of power have ever yet been found which did not end in converting to their own profit the earnings of those committed to their charge."[40]

To the end of his life Jefferson lobbied for this extension of federal principles. Thus in 1816 he wrote Samuel Kercheval, discussing recom-

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38. Thomas Jefferson to Samuel Kercheval, July 12, 1816. See *The Life and Selected Writings of Thomas Jefferson,* Adrienne Koch and William Peden, eds., (NY: Random House, 1944), p. 617.

39. Jefferson to Joseph C. Cabell, February 2, 1816. *Ibid.*, pp. 603-605

40. Jefferson to Samuel Kercheval, September 5, 1816. See *The Political Writings of Thomas Jefferson*, Edward Dumbauld, ed., (Indianapolis: Bobbs-Merrill, 1955), pp. 97-98.

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mended changes in the Virginia Constitution: "The article nearest my heart is the division of the counties into wards. These will be pure and elementary republics, the sum of which taken together composes the State, and will make the whole a true democracy as to the business of the wards, which is that of nearest and daily concern."[41]

Modern times seemingly have moved ever farther away from Jefferson's and Tocqueville's insights, partly because most towns which once had direct democratic meetings grew too large for these traditions to be maintained, but also because people became convinced that cities should ideally be controlled by professionals and the alleged objectivity they bring to their jobs. Democracy at the local level was eaten away by the technocratic ideal.

Contemporary urban problems of crime, and a decline in the quality of life generally, combined with ever more restrictive financial pressures, are now suggesting that this professionalized ideal has reached or exceeded the limits of its competence. Cities are not instrumental organizations. They cannot be managed like a corporation, for they do not exist to do the kinds of things corporations do. Further, a great many economies of scale cease applying within large urban units. Citizens generally report that smaller units of government are more responsive to their needs than larger ones. Costs are often less. It is easier for volunteer groups to contribute to the quality of urban life when politics takes place on a small scale.[42]

Today there is evidence for the growth of increasingly federal features at the neighborhood level in many American cities. This is particularly the case in Dayton, Ohio, St. Paul, Minnesota, Birmingham, Alabama, and Portland, Oregon. Dayton's 7 priority boards and 74 neighborhoods set the annual agendas for the city to work on, ensure that the city responds, and work at revitalizing run down areas, community development, and responsive services. In St. Paul, neighborhood representatives make all initial funding recommendations on all city capital projects. Each individual neighborhood is a potent source of political action in its own right. Birmingham's 95 different neighborhoods decide how to allocate funds for improving housing, sewer, street and utility services. In Portland, 87 neighborhoods with independent administrations influence

41. Thomas Jefferson to Samuel Kercheval, Sept 5, 1816. On ward republics, see also his letters to John Tyler, May 26, 1810 in *Life and Selected Writings,* p. 554; John Adams, October 28, 1813 in *Political Writings*, pp. 100-101; Joseph C. Cabell, January 14, 1818; and John Cartwright, June 5, 1824, p. 101.

42. See *The Organization of Local Public Economies* (Washington, D.C.: Advisory Commission on Intergovernmental Relations, December, 1987), Publication A-109.

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land use planning, crime prevention, fire protection, and transportation and environmental policies. In all these cases, and a growing number of others, the entire city is divided into recognized neighborhoods where citizens enter into political action on a face-to-face basis. Neighborhood newspapers, block meetings and similar activities serve to draw on all who are interested in participating. In Portland, the city funds neighborhood administrative expenses, but hiring and firing of staff is in the hands of the neighborhoods themselves. Finally, neighborhoods have become major initiators of policy. In St. Paul, 70 to 80% of the projects funded each year are initiated by the neighborhoods.[43]

These changes are not occurring because of a sudden groundswell of Jeffersonian values. They are responses to the growing complexities and expenses of modern municipal government. But studies of neighborhood participation in Dayton, St. Paul, Birmingham, and Portland suggest that Jefferson and Tocqueville's insights were profoundly accurate. When citizens are empowered by exercising control over local affairs, their sense of their relationships within their community changes. The Tufts study concludes that "public opinion polls that are a part of our project have shown a strong relation between participation in these efforts and development of a sense of community and tolerance for a range of political ideas. [With] average citizens gaining an understanding of the problems that need to be addressed and coming up with ways to address them. The relationship between citizens and government is altered."[44]

A final example is indicative of what can be done in small communities of empowered citizens. San Juan Bautista is a small town of 1650 in central California. In September, 1992, the city was forced to lay off its entire municipal staff. Its government was $150,000 in debt, was spending between $15,000 and $20,000 more per month than it was bringing in, and couldn't meet its next payroll. Two months later its debt had fallen to $50,000 and public life was doing quite well. Many town jobs, including cleaning storm drains, reading water meters, shelving library books, answering the phone at city hall, and filling potholes in the roads were being handled by retirees, the unemployed, and volunteers. San Juan Bautista's small size appears critical in enabling such an outpouring of local

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43. See Rob Gurwitt, "A Government that Runs on Citizen Power," in *Governing* (December, 1992), pp. 48-54; and *White Paper: New Directions for Community Empowerment* (Medford, Massachusetts: Lincoln Filene Center, Tufts University, n.d.), p. 6. Also see Jeffrey M. Berry, Kent E. Portney, Ken Thomson, *The Rebirth of Urban Democracy* (Washington, DC: Brookings, 1993).

44. *White Paper, op. cit.*, p. 6.

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initiative.[45] San Juan Bautista is about the size of an urban neighborhood, well within the 2500 which appears to be the ideal limit for everyone having a sense of participation within their community.

The Future of Federalism

Most commentaries on American federalism argue that its long-term prognosis looks poor. Some celebrate this diagnosis, others are concerned with the fate of constitutional government within large unitary states.[46] Many contemporary political trends seek to make the states errand boys for the central government and the cities and counties into errand boys for the states. Even mayors who delight in praising the virtues of localism and citizen involvement draw the line as soon as anyone suggests that neighborhoods be formally incorporated into an urban federal system. Virtually every politician's definition of political competence emphasizes his or her own level of power and denies it to any lower ones. These trends are real and worthy of concern, for they make the political system less responsive, less able to deal creatively with the challenges confronting it, and generate ever stronger interests opposed to adaptation. This description, however, may be one-sided.

Powerful countervailing forces are at work, and they are fundamentally outside the power of bureaucrats and politicians. American cities and towns are subordinate to state governments. They enjoy no protection under the Constitution. But, even without constitutional protection, once states reached a certain level of complexity, and political abuses attained a certain level of indefensibility, reform movements arose which instilled federal elements into many state constitutions. Progressive reforms freed many cities from domination by the state legislature, and gave them home rule.[47]

British Columbia is constitutionally a unitary polity. Even so, it has successfully experimented with a proto-federalist innovation where regional districts were formed, composed of the municipalities within their borders. Twenty nine were created, ranging from the Greater Vancouver Regional District to districts encompassing small towns and wilderness. Rather than centrally dictating what these districts would do, they were established primarily as enabling frameworks to facilitate

45. John Flinn, "Town Cashes in on Self-Reliance," in *San Francisco Examiner* (December 13, 1992), pp. B-1, B4.

46. Ostrom, "Garcia, The Eclipse of Federalism and the Central Government Trap," in *Meaning of American Federalism*, *op. cit.*, pp. 99-132.

47. Vincent Ostrom, Robert Bish, Elinor Ostrom, *Local Government in the United States* (San Francisco: Institute for Contemporary Studies, 1988), pp. 27-35.

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independent initiatives by local units. Over 1500 different service combinations have been created within this framework. British Columbia is not a true federalist system. This arrangement could be overturned tomorrow by a new provincial government. But it carries the seeds of a federalist framework, and if the experience of many American states is any guide, British Columbia may develop genuine federal features as the complexity of its society continues to increase.

But these developments may be only the tiniest harbingers of things to come. Political scientists are generally infatuated with the state. Countless books and articles are written about state building and the like. Yet the state's usefulness may be nearing its end as the core political entity. The primary purpose of having a powerful state has been military. But as the world becomes more democratic, the importance of large size begins to diminish. Today there is no serious military threat to the democratic world. This has never before been the case. China may become a threat, but it is at least as likely that as it modernizes it will go the way of South Korea and begin moving toward democracy.

Liberal democracy is the form politics takes as it makes an epochal transition from the hierarchical undemocratic state to self-organizing political processes. But in many respects, it is not an ideal institutional framework for political self-organization. It is too centralized, its political units too cumbersome and too vulnerable to exploitation by higher levels of political power. States as small as Denmark have proven capable of competently and abundantly providing the full range of domestic activities associated with national sovereignty. Denmark has fewer people than the San Francisco Bay Area or Chicago. There seems to be no economics of scale in providing social services at the size of a large city. Jane Jacobs argues persuasively that cities, not countries, are the basic economic entity in human society. She writes that "in the workings of a city's economy it makes no inherent difference which of its imports or how many originate within its own country and which in others, and the same is true of the destination of its exports."[48] The basic unit of democratic government is the small self-governing town or neighborhood. Larger units are based upon it. The logic of modern circumstances appears to favor greater neighborhood autonomy within the city. The same logic holds for greater city autonomy within the nation. The natural political unit is the city, not

48. Jane Jacobs, *Cities and the Wealth of Nations* (New York: Random House, 1984), p. 43.

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the nation. Even today some cities are beginning to realize that their economic future does not necessarily lie with the nation within which it happens to reside. In the Pacific Northwest "Cascadia" is the term applied to the economic powerhouse of Portland, Seattle, and Vancouver. In many respects the US-Canadian border is more nuisance than help.

Nor is this an isolated development. Four major cities in Europe are becoming centers for regional economic networks with little relation to national boundaries: Barcelona, Lyon, Milan, and Stuttgart. It is possible, and probably desirable, for today's cumbersome states to dissolve slowly into networks of cities with their connected regions. Federalism will then apply mostly to urban/neighborhood relations, relations between cities will increasingly become purely contractual rather than hierarchical. At this point the self-organizing potentialities of a democratic society will have been largely attained. Many independent participants will maximize both learning and creativity in addressing problems. Politics will be concentrated on human scale activities, elites will be bound by economic and political realities to be responsive and open to a degree which today can only be imagined. Maybe there will come a time when the US President will be as well-known and as important a world figure as the President of Switzerland.

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New World Disorder: Fear, Freud And Federalism

Frederick Johnstone

The ironic contradictions of New World Order have become too obvious to be ignored. Serbian snipers and Somalian warlords patrol the shifting boundaries of post-imperial disorder. The post-modern project turns out to have pre-modern problems. So much so that for some observers, like Robert Kaplan, the end of the world is near. West African airports become gloomy metaphors of doom.[1] But Johannesburg airport is open for business, and perhaps the latest jeremiads should be taken with a grain of salt.

New world disorder revives the old problem of social order, and fosters ethnic primordialism. but that does not mean we are heading into some kind of ethnic WWIII. The comparative analysis of conflict in places like the former Yugoslavia and South Africa recalls the complexity of history, the ambiguity of events. This is the gist of two recent reports from the front. Michael Ignatieff's psycho-Hobbesian reflections about ethnocentric disorder warn against any post-modern complacency about the old problem.[2] But for Heribert Adam and Kogila Moodley, who deal with one of the oldest and biggest racial problems, democratic re-stabilization amidst acute conflict reveals the orderly possibilities of disorder.[3] Either way, the stage is set for some further discussion of federalism, as a human rights compromise and as a conflict management system.

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1. Robert Kaplan, "The Coming Anarchy: How Scarcity, Crime, Overpopulation, Tribalism, and Disease are Rapidly Destroying the Social Fabric of Our Planet," *Atlantic Monthly*, cover story, February 1994.
2. Michael Ignatieff, *Blood and Belonging: Journeys into the New Nationalism* (Toronto: Penguin Viking, 1993).
3. Heribert Adam and Kogila Moodley, *The Opening of the Apartheid Mind: Options for the New South Africa* (Berkeley: University of California Press, 1993).

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Ethnocentric Destabilization: A Freudian-Hobbesian View

Ignatieff's journeys have taken him to Croatia and Serbia, Ukraine, Kurdistan, Germany, Canada and Northern Ireland. Like John Berger's perceptively unorthodox work, his book is a rich mixture of anecdote and analysis, experience and reflection. It moves easily from tea with snipers to talk with Djilas, from chats with neo-Nazi skinheads to reflections on Hobbes, Freud, Adorno. Television-oriented, it may well be dismissed by those TV-bashing intellectuals who are immediately suspicious of anything remotely accessible to the "cretinized" public. But sometimes the communicative discipline and imagistic imperative of television have beneficial effects, especially when combined, as in this case, with travel as a narrative mode. A cosmopolitan himself with a family background stretching from the Russian revolution to modern Canada, Ignatieff steers a middle course, critical of both rootless cosmopolitanism and narrow tribalism. He is not dismissive of the communal ties of place and group. Yet he is wary of their dangerous effects.

Ignatieff's book provides a Freudian-Hobbesian theory of post-Cold War ethnic conflict, emphasizing social disorder, primal fear, personal insecurity, power struggle, and displaced aggression. The Hobbesian part is the disorder and fear; the Freudian part, ethnic and gender displacement. Hobbes, Ignatieff says, "would have understood Yugoslavia," because he saw that "there is one type of fear more devastating in its impact than any other: the systemic fear which arises when a state begins to collapse" (16). He dismisses promordialist and reductionist views of ethnic conflict (which "dismiss the Balkans as a sub-rational zone of intractable fanaticism" and "end the search for explanation just when it should begin") (15) in favor of a situational and psychological focus on the politics of disorder and fear. Ethnic civil war was not inevitable, but was rooted in Tito's failure to reconstitute Yugoslavia's communist federalism in democratic terms — his failure "to allow the emergence of civic, rather than ethnic-based, multi-party competition," and to reground the social order on the "politics of interest . . . the banality of bourgeois politics" (39).

"By failing to allow a plural political culture to mature, Tito ensured that the fall of his regime turned into the collapse of the entire state structure"(16). What happened instead was the reconstitution of power elites through a politics of ethnicity. Communist collapse created disorder and fear, and old elites filled the vacuum by brokering safety in exchange for power. What safety? The safety of the group. Ethnocentric politics accentuates groups. In-groups are defined by targeting out-groups, and become

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havens in a "nasty and brutish" civil war of all against all, in which it is a lot better to be "in" than "out." In fact, one's very life may depend on it. "If Yugoslavia no longer protected you, perhaps your fellow Croats, Serbs or Slovenes might. Fear, more than conviction, made unwilling nationalists of ordinary people. . . . No one in these villages could be sure who would protect them. . . . This is how ethnic cleansing began to acquire its logic. If you can't trust your neighbors, drive them out. If you can't live among them, live only among your own" (16, 26).

The disorder-induced and power-driven politics of ethnic mobilization turns previously insignificant differences into a life-or-death matter. The significant clue in all this is precisely the insignificance of the difference, which Ignatieff discusses in terms of Freud's concept of the "narcissism of minor difference" ("that the smaller the real difference between two peoples the larger it was bound to loom in their imagination. . . its corollary must be that enemies need each other to remind themselves of who they really are. A Croat, thus, is someone who is not a Serb. . . . Without hatred of the other, there would be no clearly defined national self to worship and adore") (14). In the absence of major differences, Ignatieff is struck by the process in which minor differences are redefined as mortal sins, and by the fact that "everywhere I've been, nationalism is most violent where the group you are defining yourself against most closely resembles you" (186). He was struck by how people were "transformed from neighbors into enemies," by how people who were "neighbors, friends and spouses, not inhabitants of different ethnic planets" turned into snipers, rapists and killers (16,15).

This is a variation of the frustration-aggression theory of racism, which focuses on the fears and needs it serves, on the targets and satisfactions it provides, on killers rather than victims. How does out-group labelling provide safe targets, satisfying outlets and easy scapegoats for rage, lust and fear? And this applies in particular to out-group women. Visiting the checkpoints, Ignatieff is struck by all the young men with guns. "Until I had spent some time at the checkpoints of the new world order, until I had encountered my quotient of young males intoxicated by the power of the guns on their hips, I had not understood how deeply pleasurable it is to have the power of life and death in your hands. It is a characteristic liberal error to suppose that everyone hates and fears violence. I met lots of young men who loved the ruins, loved the destruction, loved the power that came from the barrels of their guns" (187). Ignatieff discusses the oedipal male resentment of the civilizing process: "Perhaps liberals have

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not understood the force of male resentment which has been accumulated through centuries of gradual European pacification." Civilization has meant "the confiscation of the means of violence by the state . . . which an irreducible core of young males has always resented" (187). But what if, overnight, one can become the state? Civic disorder is rich in opportunities for pain and pleasure, forceful gain, the settling of accounts. Yesterday's nobodies are today's somebodies, masters of life and death, brandishing AK 47s, raping the other side's women. *L'état, c'est moi.*

Ignatieff's approach applies well to the issue of rape. If ethnocentric politics defines the world in terms of group, group boundaries are defined and enforced by young males with guns. Serbian male-bonding came to mean the peer-group rape-killing of Muslim women. Serbian gun, Serbian knife, Serbian penis: for a dreadful moment, in the act of rape-murder, it all becomes the same thing. One defines oneself by defiling the Other. And there is no shortage of targets: of people to shoot, of women to rape, of houses to burn. The clue to the chaos is the satisfactions it provides.

So what is the meaning of all the blood on the ground, especially female blood? Ignatieff's psycho-Hobbesian view does not exhaust the subject. But it rings true for ethnic cleansing. Indeed, some of his themes, about minor differences, power grabs, and male gangs, are clearly echoed, with uncanny and almost verbatim similarity, in recent accounts of the Rwanda massacres, such as the following report from Kinyinya, a village in Rwanda. "The Hutus and Tutsis share the same language and common religious beliefs. Many have intermarried. It is often impossible for Hutus and Tutsis to distinguish among themselves who is who without looking at government-issued identity papers. . . . Rival politicians have incited tribal fears and hatreds among an uneducated population, pushing people to frenzy in a bid for power. . . . Youth gang militias, nominally allied with the government but really under no control, pose a different security threat. Often crazed by drugs and drunk on banana beer, they terrorize villages."[4] The carnage is rooted in history rather than ethnicity. But the cycle of disorder acquires a dreadful ethnic momentum of its own, and "a fear more devastating in its impact than any other: the systemic fear which arises when a state begins to collapse." The state is now the roadblock ahead. Fleeing families beg the young thugs for mercy, but have their heads chopped off. And the last words they hear are: *You are Tutsi, therefore we have to kill you.* In the village of Karubamba, the Hutu gangs

4. Jeff Sallot, "Rwanda a Land Stalked by Death," in *Globe and Mail* (May 5, 1994).

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entered church buildings where everyone had taken refuge, and "the killers swarmed among the neat rows of buildings and began sytematically killing the predominantly Tutsi population with machetes, spears, clubs and guns. 'They said, You are Tutsi, therefore we have to kill you,' said Agnes Kantengwa, 34, who was among dozens holed up inside the yellow-brick church. . . . Her husband and four of her children were butchered amid the overturned pews."[5]

Democratic Restabilization: A Weberian-Hobbesian View

Ignatieff's concern with the politics of disorder is echoed in another report from the front, though with different conclusions. In their ongoing work on South Africa, Adam and Moodley come up with a kind of Weberian-Hobbesian view: the fear of disorder means re-stabilization through elite convergence and the pragmatic management of systemic change. Conflicts and contradictions abound, but doomsday and chaos are not inevitable, especially since their real possibility has a sobering effect on elites and middle groups, who are ultimately more interested in re-stabilizing the *status quo* than in losing everything in all-out war — in a situation that actually has more to do with class than race and is free of the zero-sum absolutism of religious conflict. Surprisingly, the supposedly intractable South African conflict turns out to be far more tractable than it seems.

This is ironic, insightful analysis, which turns doomsday on its head: it is precisely the fear of anarchy that leads to previously unthinkable alliances, bedfellows and bargains, and all those strange photos, of previously unthinkable handshakes, between new leaders and their ex-jailers. These are familiar themes in the work of Heribert Adam, and they have not always been popular or politically correct. Turning doomsday on its head is never endearing to the prophets of doom, both Left and Right. Adam's reports (as later co-authored by Moodley) from the apocalyptic South African battle lines have always been clear-headed, sober-minded attempts to sort out the real trends from the wishful thinking of Left and Right, to see history not as "the inevitable unfolding of predetermined antagonistic class or racial forces" but as something "far more open-ended, susceptible to intelligent intervention by progressive actors" (7). This reflects their underlying approach, which comes through at its best in this book, and can perhaps be labelled neo-Weberian: comparative and historical, analytical and empirical, structural and cultural, pluralistic yet

5. Mark Fritz, Associated Press, Karubamba, Rwanda, in *Globe and Mail* (May 14, 1994).

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focused analysis attuned to substantive issues of power, class and conflict, but within a culturally sensitive political sociology. It leaves the reader with a good grasp of the larger forces at work behind the headlines. Of particular interest is the overall theme of systemic restabilization in conditions of acute conflict. How come the world's biggest race relations conflict has not exploded into WWIII? If it is a much bigger problem than Bosnia (a place no one had heard of until a few years ago), is it not a prime candidate for similar disintegration and civil war?

The focus on compromise is not based on illusions. The authors do not deny the bubbling volcano. Rather, they come up with a kind of volcano-management theory which, in keeping with earlier themes of pragmatic domination, now focuses on pragmatic democratization. Restabilizing South Africa means defusing the racial time bomb by reconstituting the provocatively abnormal, ascriptive inequalities of race in terms of the normal, universalistic inequalities of class. This is the work of converging black and white elites "who have come to resemble each other in their technocratic outlook and pragmatic cooperation, to share a problem-solving mentality created by the accelerating crisis," and who have no "fundamental dissent about governing the country." "The new South Africa is a misnomer; only more color has been added at the top of the old structure." In fact the color of the elite "becomes less and less relevant" (215-6).

The volcano is real enough. Structural problems and political conflicts remain — especially the tension between social justice and economic growth, between popular expectations for re-distributive programs and the merciless imperatives of the global market place. Economic growth will require tough management and may lead to a "seemingly necessary authoritarianism" by a "democratic oligarchy" of converging elites. So it would be a mistake to underestimate "the magnitude of reconstruction" and "the gulf between a growing mass of outsiders and . . . a small sector of middle class insiders." South Africa will remain an "intense political battleground well beyond the clearcut front lines of the apartheid days."

Yet this conflict may well be kept within manageable bounds by a number of factors which make South Africa different from similar situations elsewhere. South Africa is not likely to be sucked into the black hole of African "authoritarian populism," as symbolized by the Zimbabwe model, with its "pseudo-democratic patronage system . . . clientelism . . . high level of corruption and little democratic accountability." It has a much more developed private sector and civil service, and a more democratic political culture of "countervailing forces." What about the Yugoslav

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scenario of "disintegrating along racial and communal lines"? Here Adam/Moodley emphasize the many integrative forces at work in South Africa. Ethnic divisions are very different from those in the Balkans. Apartheid discredited ethnicity, and anti-colonial struggle led to a broad, inclusive nationalism. In South Africa "the democratic non-racialism espoused by most major actors is quite distinct from the entrenched, exclusivist communalism elsewhere" (134). "Yugoslavia has fallen apart because separate nationalities had been forced together. In South Africa, synthetic ethnicities were coerced to be apart and now strive to rejoin in a non-racial structure" (205). There are some similarities between the Serbs and the Zulus, between Milosevic and Buthelezi, and between the Serbs and the Afrikaners. But these are not indicative of a pervasive, centrifugal ethnic conflict. The two mainstream parties (the African National Congress and the National Party) have enjoyed extensive support, and this symbolizes a surprisingly high degree of shared values for such an acute conflict situation (220). This immanent consensus, about sharing the rewards of a common South African citizenship and advanced economy, facilitates the re-stabilization of racial inequality in terms of class.

Pointing to various factors (including South Africa's strong labor movement and advanced system of industrial relations), Adam and Moodley see a German-type tripartite Social Democratic partnership between business, labor and government as a more relevant scenario. Compared with many other places, South Africa has well-developed business, labor and government sectors and there is a "remarkable pragmatic rationality on both sides"of the Left-Right divide. "In this process of forging cautious cooperation, many a utopian dream will be disappointed particularly on the Left, but also among hardline advocates of an unfettered free market" (213-4). In the end, black nationalists, despite their historical but increasingly subdued ties to the Left, will be glad to have a one hundred year old capitalist system to work with.[6] Similarly, business will be glad to be working with the ANC's broadly inclusive, non-racial, non-ethnocentric, business-friendly nationalism.

This is all symbolized by the gold mines, always a telling clue to what is going on. If Afrikaner nationalists were careful not to kill the Anglo-cosmopolitan goose that laid the golden eggs, will African nationalists be any less so? If the former were careful to develop and diversify the economy

6. The political alliance between the ANC and the SACP (South African Communist Party) is rooted in the long historical commitment of white socialists to the black struggle. Although it was very slow to de-Stalinize, the SACP now also favors, or at least pragmatically accepts, the idea of a Social Democratic mixed economy.

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with the captured surplus from gold, will the latter be any less glad to have been rescued from the black hole of African underdevelopment? Social Democratic re-distributors need a surplus to re-distribute, and they are lucky to have one at all. Thus the gold mines, long a symbol of the old South Africa, of a labor-exploitive colonial capitalism, now become a pillar of the new South Africa.[7] The ex-leader of the black National Union of Mineworkers becomes one of the main leaders of the ANC, which is now the government. And Cyril Ramaphosa is the kind of experienced and pragmatic labor leader who has no illusions about "abolishing capitalism."

Restabilization through compromise, within the large middle ground of a Social Democratic politics: this is the main scenario. The 1994 elections seem to confirm this — a relatively smooth transition, based, ironically (for a "race war") on class politics and consensus values. The ANC's inclusive nationalism and pragmatic politics were symbolized by the conciliatory tone of Mandela's speeches during and after the election. Thus, the following statement from his victory speech of May 2, 1994 would not have been made by Milosevic about ex-Yugoslavs: "We are all South Africans. We have had a good fight but now this is the time to heal the old wounds and to build a new South Africa."[8] Adam always said that the ANC and the Nationalist Party would end up needing each other, and he was right. In cases such as South Africa old enemies end up needing each other to prevent worse enemies from taking over. The possibility of disaster has to be real enough. But in the end, radical demands for social change and conservative defence of the *status quo* merge into a common interest in orderly reform and a peaceful process of radical change.

Dis/Order: Pass Go and Collect Hobbes

Disorder-induced chaos, chaos-induced order: the Hobbesian problem is played out within a continuum of historical facts. Milosevic and Mandela are at opposite historical poles. These two reports from the front, from some of the world's major conflicts, provide some ironic elements of a comparative and historical sociology of disorder. On the one hand, they point to the disorderly consequences of artificial, non-negotiated order; on the other, to the orderly consequences of real, conflictual, negotiable disorder. Communism is not supposed to collapse, so no one knows what to do when it does. Apartheid is not supposed to continue, so everyone prepares

7. See Frederick Johnstone, "Mines of Gold, Moons of Jupiter," in *Queen's Quarterly*, Vol. 3, No. 100 (Fall 1993).

8. For Mandela's May 2, 1994 victory speech, see *Globe and Mail* (May 3, 1994).

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for its fall. The systemic implosion of communism reflects its fatal flaw, its lack of any legitimate, organic, voluntary, democratic, contractual basis. This is a real, full-blown legitimation crisis (unlike the problems in the West that this concept has in bizarre ways been used about). It is so big that it raises the fundamental question of social order itself. It means going back to square one: Pass Go and Collect Hobbes.

Communism was not supposed to end. This proud creation of the intellectuals had none of the mundane freedoms, diversities, checks and balances valued by more modest mortals in the messy marketplace of life. The Leninist state was no accident, it was a Marxist invention.[9] And utopian projects are not supposed to go wrong. They already have all the answers, which means they have forgotten the questions. Abolishing civil society means having to reinvent it, and that will take more than a few crash courses in contract law and Adam Smith. In some cases, it may not even be possible. Some new kind of hybrid, mafia-feudal, Sicilian-Stalinist, non-civil society may emerge, replete with regional warlords, roving gangs and Zhirinovsky waving his atomic pistol.[10] And replete, psychologically, with the nihilism of people who are totally fed up with the social. This does not bode too well for the reinvention of civil society. The altruistic social engineering of the Marxist intellectuals ends up in the opposite, not even a Hobbesian self, but a kind of a-Hobbesian self. All that sacrifice, pain, death, and in the end, what? Might as well have stuck with capitalism from the beginning.

Apartheid, on the other had, was not supposed to survive. There were endless conferences about the "post-apartheid state," but not about the "post-Leninist state," an unknown concept. Clear, unambiguous conflicts such as apartheid are obviously part of the Hobbesian scenario. Disorder is assumed, and everyone is busy re-negotiating the social order, in the openly contractual language of deals, rights and power-sharing, historically grounded in the inclusive anti-colonial nationalism of the ANC. Adam/Moodley think that precisely because of this the outlook for South African blacks is even better in some ways than for those in the US, who do not have the same political leverage over national policy and are by

9. The Leninist state is what happens when you let the intellectuals loose in the lab: out comes Frankenstein, and 60 million corpses.

10. In a recent visits abroad, Zhirinovsky spat on Jewish students and warned them of his "atomic pistol." About 80% of private businesses in Russia may now be making payoffs to underworld criminals, who, according to Colonel Rafael Ekimian, chief of the Moscow police's special squad against organized crime, "are highly organized, well-armed and just about the deadliest people you can meet anywhere." (*Canadian Press*, June 3, 1994).

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now locked into the cycles of underclass life. Clear enemies make one strong. That is the symbolic meaning of Mandela. Blunt, explicit oppression means blunt, explicit resistance.Wall Street is not faced with a black President and expectant slogans about a million houses for blacks. While it will be difficult to meet expectations, it will be easier than elsewhere. South Africa's advantage, over both post-communist Russia and post-colonial Africa, is the hundred years of industrial capitalism and constitutional democracy, which leave an advanced economic and civic infrastructure in place.

The Adam/Moodley theme of an embattled but pragmatic compromise, of an embattled but inclusive center, goes well beyond South Africa to the global stage, and echoes Ignatieff's theme about an embattled "civic nationalism." Both steer a middle course in the global debate about resurgent nationalism, vindicating but not romanticizing the realities of group, recognizing but not sentimentalizing the ties of place, respecting ethnic groups but rejecting ethnic primordialism. This is apparent in Ignatieff's distinction between civic and ethnic nationalism, and in Adam/Moodley's discussion of South African and Zulu nationalism. The latter is interesting in the way it locates and specifies the ANC's distinctively non-racial South African nationalism as an inclusionary rather than exclusionary social movement — as a type of what Ignatieff calls civic nationalism. This is combined with a realistic sense of Zulu veto power, albeit based on a sociological rather than primordial account of tribal violence in South Africa, yet pointing toward some kind of federalist middle ground. They correctly foresaw that "Inkatha's power may lie not in numbers but in its ability to disrupt an imposed settlement," and concluded that, tawdry power struggles aside, the secession threat of Zulu nationalism (referring back to a pre-conquest, pre-South African Zulu sovereignty), "makes the constitutional debate about federalism versus centralism, particularly significant" (209-210).

Ignatieff also arrives at the middle ground of Canadian federalism. His discussion of Quebec nationalism is refreshingly distinguished by its unapologetic focus on the double standards and myopic sentimentalism of the French separatists, who have not had to answer some tough questions. They refuse to acknowledge the remarkable evolution of an autonomous Quebec within a federal Canada and they refuse to concede the same self-determination rights they claim for themselves to native people such as the Cree of northern Quebec (who, ironically, have a much longer historical claim to the territory of Quebec and who awkwardly get in the way of the gigantic James Bay hydro projects

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strategically vital to an independent Quebec).[11]

For Ignatieff, taking the middle ground means distinguishing between the pluralism of civic nationalism and the absolutism of ethnic nationalism. It means a simultaneous critique of two extremes: of "privileged cosmopolitanism" and narrow tribalism. He is critical of rootless cosmopolitanism for being condescending and insensitive to the ties of group and place. ("If patriotism is the last refuge of a scoundrel, so post-nationalism and its accompanying disdain for the nationalist sentiment of others may be the last refuge of the cosmopolitan") (11). It ignores what it owes to the nation-state in creating the social order on which it is itself dependent and therefore, it ignores a similar, possibly progressive role for the nation-state elsewhere. ("Cosmopolitanism is the privilege of those who can take a secure nation state for granted . . . the cosmopolitan order of the great cities . . . *depends critically on the rule-enforcing capacities of the nation-state*") (9). Cosmopolitans love all that "cheap air travel." But they are glad to have a return ticket. A one-way ticket might mean they would take a bit less for granted. They have forgotten how the game works. They need to Pass Go and Collect Hobbes.

While belonging is important, Ignatieff's journeys have made him "rethink the nature of belonging": "I have been to places where belonging is so strong, so intense that I now recoil from it in fear. The rational core of such fear is that there is a deep connection between violence and belonging" (188). His strongest critique is reserved for ethnic nationalism, for its inherent exclusiveness, its implicit hatreds, its murderous outcomes, its escapist fantasies, its self-exonerating moralism: for its themes of "fantasy, insecurity and inauthenticity," through which it "rewrites and recreates the real world, turning it into a delusional realm of noble causes, tragic sacrifice and cruel necessity" (187). It satisfies grandiose delusions through "a language of fantasy and escape" (187). "Instead of facing up to the reality of being a poor, primitive third-rate economy on the periphery of Europe, it is infinitely more attractive to listen to speeches about the

11. Quebec separatists simultaneously insist on the divisibility of Canada and the indivisibility of Quebec, on self-determination for the French but not for the natives (who have been in Quebec ten times longer than the French). Thus, *Parti Quebecois* leader Jacques Parizeau thinks nothing of telling Canadians he has a right to split up the country, and then warning Quebec natives (who do not want to stay in an independent Quebec) that (in his exact words) "you can't go around splitting up a country." Likewise, Lucien Bouchard (leader of the *Bloc Quebecois*, which represents the separatists in the national Parliament in Ottawa) recently claimed that: "The natives in Quebec do not have the right of self-determination. It does not belong to them." See *Canadian Press* (May 25, 1994).

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heroic and tragic Serbian destiny, and to fantasize about the defeat of her historic enemies" (187). This, however, never works. Ignatieff recalls a passage in an Adorno essay "on coming to terms with the past" to the effect that "nationalism no longer quite believes in itself," when he observes that: "There was a bewildering insincerity and inauthenticity to nationalist rhetoric everywhere I went, as if the people who mouth nationalist slogans were aware, somewhere inside, of the implausibility of their own words." Purist rhetoric can never quite overcome "stubbornly adverse sociological realities, like the fact that most societies are not and never have been ethnically pure" and "that no modern society can beat to the rhythm of a single national will" (186).

The middle ground of civic nationalism may be imperfect, but it has the virtue of being "a home to all" (189). "What's wrong with the world is not nationalism itself. Every people must have a home . . . What's wrong is the kind of nation, the kind of home, that nationalists want to create"(189). But if Ignatieff is a liberal, he is a realistic, worried, disillusioned, Hobbesian liberal, who fears that liberals have become "an embattled minority." "I know which side I'm on," he says, but "I also know which side, right now, happens to be winning." "The world is not run by sceptics and ironists but by gunmen and true believers and the new world they are bequeathing to the next century already seems a more violent and desperate place than I could ever have imagined. If I had supposed, as the Cold War came to an an end, that the new world might be ruled by philosophers and poets, it was because I believed, foolishly, that the precarious civility and order of the states in which I live must be what all people rationally desire. Now I am not so sure. I began the journey as a liberal, and I end as one, but I cannot help thinking that liberal civilization — the rule of laws not men, of argument in place of force, of compromise in place of violence — runs deeply against the human grain and is only achieved and sustained by the most unremitting struggle against human nature" (189).

Back to Federalism: Human Rights Compromise?

If the Hobbesian problem is played out within a continuum of historical facts, it is also played out within a continuum of systemic choice. In the middle ground, between the opposite poles of tribalism and universalism, federalism remains a meaningful option, as a compromise human rights system, striking a balance between the individual and the group. In the Balkans, Ignatieff laments Tito's failure to reconstitute Yugoslavian federalism in democratic terms, while in Quebec he explores the understated yet progressive space of Canadian federalism. For Adam/Moodley,

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as for other observers of South Africa, the Zulu question is raising the whole issue of federalism for the future in ways that were not correctly anticipated in the past. The ANC, in particular, has had to modify its hard line unitary statism.

For some, however, the middle ground is not the place to be. Or, to put it somewhat differently, federalism should not be conceived in these terms. It is only a solution if it is reconceived in the more radical and communal terms of federal populism. This is the gist of Piccone's critique of my defense of "liberal federalism."[12] Liberal federalism has much in common with Ignatieff's concept of civic nationalism. They are both compromise concepts of liberal-pluralism. They recognize and empower groups and regions to some extent, but within the transcendent sovereignty of human rights and the rule of law. For Piccone's radical federalism that is precisely the problem. It means token groups rather than authentic community. Liberal pluralism is dismissed as a flimsy facade for the homogenizing agenda of modern universalism.

Piccone's critique makes valid and interesting points, especially in the discussion of the historical dynamics of human rights and of global economics, and in its theme of subsidiarity: of local rather than central jurisdiction of rights. In the end, however, it still underestimates the importance of human rights, and remains trapped within a basic contradiction between its political anti-universalism (federalism) and its economic universalism (free trade). On the political level Piccone criticizes human rights as a universalistic New Class plot against authentic community. But the universalism which he rejects in politics he embraces at the economic level, in his enthusiastic defence of free trade. The old peasants who are apparently not sovereign enough under liberal federalism are then told to retire or get-with-it in the global market place. Piccone rejects human rights as the storm troopers of bureaucratic universalism, but then defends free trade universalism against backward nationalism. Political universalism is bad, because it subverts local autonomy, but economic universalism is good, because it subverts political universalism. So hegemonic universalism is a problem raised by individual rights but not, apparently, by market rights, which emerge from the whole discussion surprisingly unscathed.

It was in search of a more consistent approach to sovereignty (because

12. Frederick Johnstone, "Quebeckers, Mohawks and Zulus: Liberal Federalism and Fair Trade," in *Telos* 93 (Fall 1992) and Paul Piccone, "The Case Against Liberal federalism and Protectionism: Reply to Johnstone," in *Telos* 93 (Fall 1992).

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one cannot go very far with sovereignty by privileging globalism) that I insisted on fusing the debates about federalism and free trade, and it was in search of some kind of balance, between the local and the global, between sovereignty and universalism, that I defended liberal federalism and fair trade. Leaving aside the issue of free trade, the key issue in the political debate is human rights. Piccone rejects human rights as a kind of liberal-bureaucratic-centralist-imperialist-homogenizing-hegemonic scheme. That there is some weight and wisdom to this critique, especially in its more general populist themes, is precisely why federalism exists in the first place, as a vindication of the old peasants against the experts, of the old village against the Enlightenment, of the Canton of Uri against the modern state. (The cosmopolitans have not just forgotten Hobbes, they have forgotten why federalism exists in the first place.) But human rights must have some effective leverage or they are meaningless. While such leverage does have bureaucratic-centralist overtones, it does not simply equal the unitary statism and Orwellian Big Brotherism Piccone implies. To reject such leverage is to abandon the compromise concept of federalism, as a balance between individual and group rights. While Piccone acknowledges the idea of federalism-as-balance, his rejection of liberal federalism is, or comes close to being, a rejection of this compromise concept.

Piccone characterizes liberal federalism as mere tokenism, as a kind of "*lederhosen* federalism," in which groups are permitted a kind of token identity, which is compromised and inauthentic because not fully sovereign. It is a phony solution, which just regulates rather than resolves problems, "while limiting the old peasants' wisdom to, e.g., making goat cheese and singing traditional songs while wearing Lederhosen, without occasionally scalping their enemies, cutting off their women's clitorises or cooking foreigners."[13] But this underestimates the autonomous power groups and regions can wield in Western federal systems such as Switzerland and Canada. Scotland and Quebec are worlds apart, because Britain's unitary state and Canada's federal state are very different systems.[14]

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13. Piccone, *op. cit.*, p. 37. The reference here is to my use of clitorectomy and cannibalism as symbolic refutations of relativistic critiques of universal rights. Cannibalism is not a literal issue; it is a metaphor for ethnic cleansing. Whether you boil, scalp, or rape the Other is not the issue. The issue is what one can do to the Other against the Other's will. Liberalism surrounds the individual with an aura of rights, and institutionalizes this in its division of powers — a division which can include a significant degree of regional and group powers.

14. Frederick Johnstone, "Quebec, Apartheid, Lithuania and Tibet: The Politics of Group Rights," in *Telos* 85 (Winter 1989).

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It also underestimates the dynamism and creativity of popular culture in the West, the great number and diversity of voluntary associations, the pluralistic cultural consequences and civic dynamics of Western liberalism, the empowering effects of do-it-yourself consumerism and de-centralized technology. Radical critique of the West seems to have lost sight of a remarkable social fact: the thousands of voluntary associations alive and well in the so-called land of alienation. This is the opposite of the old Communist Bloc, and that is no accident. Because liberalism guarantees a private life, it leaves people less cynical about a public life. Western altruism is rooted in the security of Western individualism. Western sociability is rooted in Western selfishness. To the extent that communism abolishes a private life, it leaves people cynical about a public life. If one cannot do anything for oneself, why do anything for anyone else? Why join together with anyone else to do anything? Western voluntary associations are a kind of psycho-cultural federalism — an immanent, unseen anarchism in which groups of all kinds have their say and do their thing right under the nose of alienation theory. A social system with 25,000 different agendas is not in the grips of Orwellian centralism. Neither is a system full of power tools and personal computers. Critics should spend more time in K-Mart.

Piccone's defence of federal populism simplifies matters by at least confirming rather than refuting my allegations about it, i.e., that it is a major departure from compromise. This simply confirms rather than denies the dangers that go along with it. I asked the rhetorical question: where is the liberal side of the equation in federal populism? And the answer is now even clearer than before: nowhere. And this is a problem. Perhaps we have to be more careful before throwing away the "rule of law," or reinventing it in communal terms. This does not mean that Left-anarchist and Right-tribalist critiques of liberalism have nothing valid to say. Yet, it may be unwise to dump the old liberal idea of a universal and impersonal framework within which individuals and groups can make their choices and pursue their interests in relative safety. The critique of *lederhosen* federalism is all very well, but could easily end up in a kind of *lederhosen* populism. Liberalism may be flawed, but it can still be convincingly defended, both in principled terms (its intrinsic merits, its historic achievements), and more pragmatic terms (the least of various evils, the lack of convincing alternatives). There may be problems with the transcendent universalism of liberal federalism. Yet they seem mild when set against the ethnocentric rage unleashed by unbridled communalism. Piccone is not defending this kind of populism, but his axiomatic rather than

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pragmatic critique of liberal federalism leaves him with little conceptual or institutional leverage against the authoritarian implications of his utopian communalism. At the same time, he overstates these implications of the liberal state. Of course, the rule of law is in some sense authoritarian, in the sense of transcendent authority. But try living without it. Hobbes understood the human condition better than Rousseau. We do not need utopia, we need the police. Better than some grand vision of the Social Good is a social order that both empowers and restrains individuals and groups through the rule of law. Subsidiarity is all very well, but a few guarantees from the center to warn some of the neighbors, that law and order is not just in their hands, are also welcome.

The ongoing debate about world disorder thus raises questions about where and how desirable is the middle ground. The ongoing debate about federalism raises the basic question about whether human rights stay in the federalist model, and if so how. Is it a matter of degree, or of incommensurate models? For the liberal model, it is a question of balance, of compromise; but for the more radical model, of federal populism, it is not: groups reign supreme. Of course the liberal model has its problems, with its overarching framework of individual rights. But the anti-liberal populism of a utopian search for some kind of completely non-liberal model of the good society gets into far more dangerous waters. The basic problem with federal populism is its axiomatic rejection of transcendent rights. A world without universal rights would be a step back in time — and not for the better. Rights may indeed be a product of history, and of Western history at that, but so what? What is not? Universal ideas are not invalid because they have historical roots. On the contrary, history is a teacher and guide. Today's universalism comes out of yesterday's racism. That is the legacy of Auschwitz. Old furies of group and place led to a new global culture of human rights. And perhaps in the future, they will say, about our times: "Well, at least they learned a few lessons from all that death."

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Beyond the State: Gianfranco Miglio's Challenge

Alessandro Campi

Known primarily as the "ideologist of the Northern League,"[1] Gianfranco Miglio has been the first and maybe the only scholar who has theoretically elaborated for that movement themes concerning national unity, federalism, the party system and fiscal revolt.[2] Because of his distinct personality and often polemical and oppositional positions, he is often depicted by the more sensationalist sectors of the press as the *homo diabolicus* of Italian politics. Despite his reputation as a conservative Catholic scholar, he has even been described as an irredentist and a revolutionary,

1. Born in Como in 1918, Miglio received a law degree in Milan's Catholic University in 1940. In 1948 he began teaching history of politics at that same university, where he became rector in 1959 — a position he held until 1988, when he retired. In April 1992 he was elected to the Italian Senate in the Northern League's list. He was re-elected in March 27-28 1994. For more biographical information, see Giorgio Ferrari, *Gianfranco Miglio. Storia di un Giacobino Nordista* (Milan: Liber, 1993).

2. The Northern League, which over a few years has developed into a major political force — to the point of becoming part of Silvio Berlusconi's government coalition — has already spawned a vast literature. See the autobiography of the League's leader, Umberto Bossi, written with Daniele Vimercati, *Vento del Nord* (Milan: Sperling & Kupfer, 1992). For a history of the movement and its political ideas, see Daniele Vimercati, *I Lombardi alla Nuova Crociata* (Milan: Mursia, 1990); Giulio Savelli, *Che Cosa Vuole la Lega* (Milan: Longanesi, 1992); Umberto Bossi and Daniele Vimercati, *La Rivoluzione, la Lega: Storia e Idee* (Milan: Sperling & Kupfer, 1993). For a general evaluation of the League phenomenon, see Renato Mannheimer, ed., *La Lega Lombarda* (Milan: Feltrinelli, 1991) and Ilvo Diamanti, *La Lega. Geografia, Storia e Sociologia di un Nuovo Soggetto Politico* (Rome: Donzelli, 1993). For sources in English, see also *Telos* 90 (Winter 1991-92), special issue on the "The Leagues in Italy," especially essays by Paul Piccone "Federal Populism in Italy," Carlo E. Ruzza and Oliver Schmidtke, "The Making of the Lombard League," and Bernard Poche, "The Lombard League: From Cultural Autonomy to Integral Federalism."

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— a "Right-wing Jacobin" so extremist and radical as to make the League's leader, Umberto Bossi, appear as a moderate.

Luckily, however, Miglio will not go down in history only as the League's ideologist or as a political provocateur.[3] His contribution after WWII has been much more substantial and he will probably be remembered as one of this century's leading political scientists. Along with Julien Freund,[4] he is probably the main European exponent of that school which, through Carl Schmitt, can be traced back to Max Weber and the tradition of German historicism. Unfortunately, this work is known poorly in Italy and altogether ignored abroad. Up to a few years ago, Miglio was known only among a few experts in administrative theory and constitutional law. He achieved notoriety only after he joined the Northern League. Paradoxically, this sudden notoriety has resulted in an even greater unfamiliarity with his scholarly work.

Miglio's federalism and his critique of the unitary Italian state have deep roots. He has been federalist and anti-unitarian since the days of his anti-fascist militancy within the ranks of the Lombard Catholics working

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3. Miglio's militancy in the Northern League may be equated with Vilfredo Pareto's infatuation with fascism, as a confirmation of his own prediction concerning the decline of liberal and bourgeois elites (See Luigi Montini, *Vilfredo Pareto e il Fascismo* [Rome: Volpe, 1974], p. 15: "Pareto . . . saw fascism sympathetically for reasons and affinities not at all superficial, but flowing out of his sociological outlook"). Or, it may be compared with the virulent nationalism which characterized Max Weber's last years. (See Wolfgang J. Mommsen). Miglio may have seen in the League a translation, no matter how spurious, of his own political ideas, i.e., the possible vehicle whereby to implement his constitutional reform. After decades of study and after becoming disillusioned with the Christian Democratic Party, Miglio too may have wanted to play a role no longer in university lecture halls but in the squares, within party sections and within what Pier Paolo Pasolini disparagingly referred to as the "Palace." During the first half of the 1980s Miglio sought to collaborate with Bettino Craxi's Socialist Party, whose project of a Great Reform of the Italian political system along presidential and "decisionist" lines went nowhere. Things seem to have gone somewhat better with the League, but only at the beginning. Precisely when, after the March 27-28, 1994 elections, the League gained power, Miglio ostentatiously decided to leave the movement. As it usually happens in these cases, reciprocal accusations of betrayal have not been lacking. Miglio has accused Bossi of having renounced federalism in order to participate in Berlusconi's government. For his part, Bossi has accused Miglio of having abandoned the League because he had not been made Minister of Institutional Reforms in the new government. For Miglio's account of these events, see his *Io, Bossi e la Lega. Diario Segreto dei Miti dei miei Quattro Anni sul Carroccio* (Milan: Mondadori, 1994). Presently, Miglio is an independent senator and has not joined any other political group.

4. See Julien Freund, *L'Essence du Politique* (Paris: Sirey, 1965). Along with Miglio, Freund (who died September 1993 at the age of 72), is a scholar whose work has yet to be appreciated properly. In various ways, his scholarly contribution in France is even greater that that of a much better internationally-known scholar, Raymond Aron.

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with the journal *Il Cisalpino*. Over the years, he gradually moved away from the Christian Democratic Party, which he saw turning into an instrument of corruption and clientilism, while developing a growing Calvinist, anti-Rome attitude (today Miglio defines himself a "Hugonaut"). Given this background, joining the League — primarily an ethnic movement predicated on the Protestant ethic, fiscal protest and political moralism, in opposition to the partitocracy — seems to have been practically inevitable. At any rate, Miglio is responsible for provocations other than those characterizing his activity as a member of parliament and political leader. This can be seen in a collection of "selected writings" covering most of his scholarly career from 1942 to 1987.[5] Despite over half a century of scholarly activity, however, Miglio has not yet been the subject of any critical study, except for the conference with which, in 1988, a group of scholars celebrated his 70th birthday.[6] Abroad, none of his work has ever been translated.[7] This is peculiar, considering the fact that he has a substantial number of followers well established within Italian universities and is probably the last and most representative exponent of the Italian "realist" tradition of political science, the heir of Mosca, Pareto and Michels.

The Stages of Miglio's Thought

Miglio's intellectual development can be divided into at least five distinct stages. The first begins with his 1940 doctoral thesis, *The Origins and Early Developments of Public International Legal Doctrines in the Modern Age*. It is characterized by an interest in the *jus gentium* elab-

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5. Gianfranco Miglio, *La Regolarità della Politica. Scritti Scelti Raccolti e Publicati dagli Allievi*, 2 Vols. (Milan: Giuffré, 1988). This collection includes some previously unpublished "Considerazioni Retrospettive," pp. XIX-LXXV, meant to explain the "genesis and internal development" of his work. Miglio is not a prolific author. He has written very little — almost always short essays for specialized journals or contributions to symposia or scholarly conferences. This is the case with the 1980 essay "Beyond Schmitt," in which Miglio clarifies his intellectual debt to Schmitt and emphasizes the irreducible opposition between *political* and *contractual* obligation, between "loyalty (political pact)" and the "contract-exchange." Miglio's whole political theory rotates around this elementary contraposition.

6. The contributions to this conference have been collected in Lorenzo Ornaghi and Alessandro Vitale, eds., *Multiformità ed Unità della Politica* (Milan: Giuffré, 1992).

7. The only exception is an essay on "Towards a Federal Italy," in the previously mentioned special issue of *Telos* on the Leagues, *op. cit.*, pp. 19-41. According to Ernst Jünger, however, in Germany Carl Schmitt always praised Miglio's scholarly work. The following entry can be found in the diary of Marcello Staglieno, a Jünger scholar and editor of the Milanese daily *Il Giornale*: "October 21, 1978. Jünger tells me, here in his home in Wilflingen, that Schmitt loves Italy. Among the Italians, however, there are only a few he admires, one of which is Miglio. Schmitt, says Jünger, describes him as 'one of the most cultured men in Europe'."

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orated by European juridical culture during the 14th and 15th centuries, in the doctrines concerning the "just war" developed within Scholasticism and in the models of interstate relations typical of classical antiquity. This initial interest in international law resulted in some later works in which Miglio developed, in terms of interstate relations, a dualistic "model of alternation between pluralistic arrangements with unlimited sovereignty and bipolar arrangements with limited sovereignty."[8]

The second stage is characterized by an inquiry primarily concerned with political doctrines, following Mosca's approach — one very sensitive not only to political ideas as such and to particular authors but also to relations between political "doctrines" and political "institutions." Initially the focus was on Marsilius of Padua — the adversary of medieval Christian

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8. See Gianfranco Miglio, "La 'Sovranità Limitata'," in *La Regolarità della Politica, op. cit.*, pp. 1007-1074. It is interesting why Miglio, following Schmitt, abandoned international law in favor of studying relations *within particular* political aggregations: "[Schmitt's] theory of the 'categories of the political' — the famous '*amicus-hostis*' aggregation — made it clear to me that every true political *aggregation*, whether formalized or not, is always 'exclusive'; it creates an 'external' sphere *within* the foundation of 'internal' relations. In order to recognize ourselves as 'friends' it is necessary to have (or invent) potential 'enemies.' Within such a perspective 'international' relations are only one possible mode of 'inclusion-exclusion' which come about, intersect and dissolve as a result of constantly changing political aggregations (and struggles): every 'political order' is destined to be undermined by 'politics,' and conflictuality (war) is the natural condition operating within relations *between* more or less organized groups . . . . If such is the case, it is useless to try to explain the history of 'communities of peoples' in terms of relations among its components; what happens *within* human aggregations is only the consequence of *internal* dynamics (political struggle): war and peace were born inside and not outside every political syntheses. Hence my loss of interest in the history of ideas and 'international' institutions."' Cf. "Considerazioni Retrospettive," *op. cit.*, pp. xxxvii-xxxviii.

Not accidentally, Miglio's recent work on neo-federalism marks a return to international themes. The decline of the state and, consequently, of foreign policy traditionally understood as relations between sovereign states, has necessitated a radical rethinking of the rules governing "the international community." Recently Miglio clarified his own position as follows: "Once the power of a state was basically a function of its military power, its productive apparatus and its institutions. International coexistence broke down with the emergence of statism . . . This system has developed until the process of politicization of the modern state has reached its acme with the bipolar system, with the contraposition of two planetary orders. Within such a context politics is the measure of all things. But this system broke down in November 1989. The end of the bipolar system has brought about the weakening of the state. . . . In this sense, the 'disorder' within modern states is not a real disorder: it is the reconstitution of the unity of world coexistence. It is a jungle within the states — a jungle which will be organized, along with the international community, on the basis of contracts and political pacts. This contractual framework will obtain both within . . . the space presently occupied by the states, as well as within the international framework. This is the root of neo-federalism. Its victory is the victory of the contract over the political pact." See "Ex Uno Plures," in *Limes*, No. 4 (1993), p. 176.

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universalism and the first theoretician of state particularism — and subsequently (following Max Weber) on the developments of monocratic power in Hellenistic political systems.[9] This second phase concluded with a 1964 lecture delivered on the occasion of the inauguration of the academic year at the Catholic University in Milan, "The Transformation of the Present Political Regime," a radical attempt to synthesize the changes undergone by the Italian political system twenty years after the advent of the new post-WWII constitutional regime.[10] The object of harsh critiques at the time of its publication, this essay discusses the phase of demobilization of the representative regime and, more generally, the "*Rechtsstaat.*"[11]

During the third phase, covering the 1960s, Miglio became involved with administrative history. On the occasion of the centennial of Italian unification and in relation to the debates concerning the political and juridical implications of the country's administrative unification, Miglio undertook a series of inquiries which led him, in 1961, to form in Milan the "Italian Foundation for Administrative History" (FISA). During this phase the focus shifted to describing the system of power "from below," from the "low branches" of a political system, i.e., precisely from administration where politics, having abandoned the ideal sphere, becomes embroiled and confused with technical details, material interests and administrative procedures.[12]

During the fourth phase, politically the most interesting, Miglio outlined

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9. Gianfranco Miglio, *Le Regolarità della Politica, op. cit.*, Vol. I, p. xxxiii. Miglio has dedicated two essays to Marsilius of Padua: "La Crisi del'Universalismo Politico Medioevale e la Formazione Ideologica del Particolarismo Statuale Moderno" (1942) and "Quistioni Marsiliane" (1946), *Ibid.*, pp. 3-105 and pp. 119-138.

10. Gianfranco Miglio, "Le Trasformazioni dell'Attuale Regime Politico" (1964), now in *Le Regolarità della Politica, op. cit.*, Vol. I, pp. 449- 474.

11. Years later Miglio wrote: "I concentrated my attention on the progressive 'distancing' of the real functioning of institutions with respect to the model of the elective-representative '*Rechtsstaat*,' to which the latter would have had to correspond; and I described the violations, the omissions, the collusions, in other words, the illegal behavior which everyone could see . . . . I concluded by advancing the hypothesis that the system was in the process of being transformed into something different and, in a rather provocative way, I outlined the theory of a 'necessary' alternative to 'pure' parliamentary regimes and temporary charismatic dictatorships."Gianfranco Miglio, *Le Regolarità della Politica, op. cit.*, Vol. I, p. xlviii.

12. Indicative of this phase are the essays "Gli Studi di Storia Amministrativa. Gli Aspetti Amministrativi dell'Unificazione Nazionale" (1962); "Premesse as una Metodologia della Storia Amministrativa," (1964); "La Classificazione Storica delle Attività Amministrative" (1964); in *Le Regolarità della Politica, op. cit.*, Vol. I, pp. 377-402, 405-418 and 421-445.

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the bases of his work through a collective research effort[13] which resulted in the book series "Arcana Imperii."[14] Concerned with the study of the morphological, structural and behavioral "regularities" characterizing political practice, Miglio tackled the radical challenges that modern political regimes and their "transformations" pose for contemporary political science. According to him, it was time to redefine key concepts (such as the nation and the common good), analytical categories (such as representation, sovereignty and political obligation) and institutional "figures" (such as the state, the party and parliament), which for centuries have characterized Western political history.[15]

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13. Between 1980 and 1983 Miglio directed the so-called "Milan Group," composed of leading Italian scholars dealing with constitutional law. It produced the most organic and complete project of constitutional revision developed in Italy after WWII. The Milan Group's reform proposals have been published in two volumes: *Verso una Nuova Costituzione* (Milano: Giuffré, 1983). As is often the case, their publication generated a heated debate, but no concrete results. Today the Italian constitution is still considered intractable by almost all political factions, and although there has been considerable discussion concerning how to reform it during the past twenty years, no revision has yet been adopted by Parliament. Under pressure — as a result of the intensification of the institutional and financial crisis — politicians recently have agreed to modify the electoral law: from an integrally proportional system to a semi-maggioritarian one. In many respects, fifty years after it was adopted, the Italian constitution remains taboo. Calling for reform, Miglio often cites article 33 of the "declaration of rights" preceding the constitutional project presented by the Girondins to the National Convention February 16 and 17, 1793 "A people has always the right to revise, reform and change its constitution. A generation does not have the right to subject to its laws future generations."

14. Published by Giuffré and directed by Miglio, this series has already generated over thirty volumes by scholars such as Otto Brunner, Hermann Heller, Carl Schmitt, Robert Ardrey, Rudolf Smend, Gabriel Naudé, Karl Loewenstein, Gerhard Leibholz, Robert Michels, Lorenz von Stein, Joseph Kaiser and Julien Freund. This list readily betrays the roots of Miglio's thought in the German juridical culture of the past two centuries.

15. Located between a methodological positivism (of an historicist derivation) and a radical anti-humanism, Miglio's concerns are similar to those of Niklas Luhmann. Yet, while the latter wants to liquidate the traditional European approach to politics (see his *Teoria Politica nello Stato del Benessere* [Milan: Franco Angeli, 1983]), Miglio seeks to free this same tradition from the last residues of "moralism" and "utopianism" (injected into European political thought by the Catholic and Enlightenment traditions) and to systematize it within the context of a "realist" theory. As Miglio wrote in the preface to the Italian translation of Carl Schmitt's *The Concept of the Political* (Milan: Il Mulino, 1972), p. 13, this is a project prefiguring "the unification, in one comprehensive system, of the 'partial truths' of Thucydides (the 'regularity' of inquiry into 'external' domination), Machiavelli (the 'regularity' of competing egoisms), Bodin (the 'regular' presence of a decisive chief in every political system), Hobbes (the 'regular' fictitious character of every community and the ultimate root of political representation), Mosca and Pareto (the 'regularity' of the 'political class'), Tönnies (the 'regularity' of the antithesis community-society), Weber (the 'regularity' of the ideological forms of legitimation) and, finally, Schmitt (the 'regularity' of the contraposition '*amicus-hostis*')."

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The fifth phase, the most recent, partially overlapping with the fourth, is the one during which Miglio found himself operating, in spite of himself, as a politician and a doctrinaire. This undoubtedly problematic overlap, which may help understand some his new libertarian positions, coincides with the rediscovery of a classic of civil disobedience such as Henry David Thoreau, with the explicit call for a fiscal revolt, extreme economic liberalism, and a vindication of secessionism, which now typifies his federalism.[16]

Clearly, such a vast opus cannot be summarized in a few pages, especially since, according to Miglio himself, what he has published so far is merely a prologue to his *Lezioni di Politica Pura* — a work he is presently writing, which should outline that "general theory" of politics he has hitherto only prefigured. At any rate, in order to provide an idea of Miglio's contribution to political science, it is enough to outline some key themes, such as the problem of the state, the paradox of political representation; the contradiction of the parliamentary system; the status of the political party (and the problem of the so-called partitocracy), and the meaning of that *neo-federalism* of which he has become the main theoretician.

Politics Beyond the State

On the theme of the state, the key concept of the European political tradition, Miglio belongs to that school of thought that goes from Max Weber to Carl Schmitt and Julien Freund. Weber first described the extent to which the political institution of the state was determined historically and limited culturally to Europe. Schmitt subsequently saw the state *one* of the possible modes of articulation of the "political" and the highest expression of European juridical rationalism. Finally, Freund has developed to its logical conclusion this relativistic interpretation of political forms by definitively dissociating the formal and relative character of the state from the empirical and absolute reality of politics: "By 'state'," writes Freund, "we mean the kind of political unity which most independent countries have given themselves, one after the other, after the 16th century. Consequently, it is a modern political unity, different from previous ones such as Oriental empires, Greek cities or the medieval feudal realms. . . . The state is an historical creation, whose origins goes back to the beginning of the Renaissance. Along with all other historical creations,

16. See Miglio's introductory essay to the Italian translation of Henry David Thoreau's *Civil Disobedience* (Milan: Mondadori, 1993). Miglio's "secessionist" fame was strengthened after he introduced in Italy Allen Buchanan's thesis of "political divorce."

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it can disappear. It is not eternal: another kind of political form can replace it, in the same way it displaced another."[17]

Miglio shares such a judgment.[18] Understood as a specifically "modern" form of organization of power, the "state" came about to neutralize and eliminate the 15th century civil wars. From the very beginning it sought to be a "neutral" and "impartial" sphere — tendentially *non-political* — able to regulate political struggles and to guarantee "security, understanding and peace." (Schmitt). But the state also claimed the *monopoly* of politics, therefore sovereignty and the connected power of decision. Miglio implicitly points to the Nietzschean image of the state as a "two-faced monster." On the one hand, the state presents itself as a superior and neutral *truth*, i.e., as a juridical "authority" and as the technical sphere of impartial administration of civil activities; it tends to bring about *depoliticization*. On the other hand, it leads to the resurfacing of the conflictual logic typical of politics. Because of its very nature, this logic tends to undermine the unity of the state and to generate new struggles which cannot be resolved within existing structures. According to Miglio: "The modern state as a legal entity is a construction based entirely on the contract and therefore falling within the non-political area of the 'private.' In essence and in its various historical figures, the state is a complex of services — a gigantic set of contractual relations. . . . The modern state is synonymous with 'normality': its whole framework comes into being in a zone external to the political pact and its powers are regulating or regular powers. i.e., 'ordinary' powers."[19]

This is the antinomy Miglio locates as constitutive of the state *synthesis*: what contraposes the logic of the *political pact* to the logic of the *contract-exchange*, i.e., what contraposes *political obligation* (based on ties of collective loyalty and on the relation of protection) to *juridical obligation* (based on the encounter of free individual wills). According to Miglio, notwithstanding the illusion of liberal theoreticians, politics is never entirely resolved in law. The state's loss of the monopoly of politics, the extension of the domain of conflict, the intensification of armed clashes within the state (political extremism and the phenomenon of terrorism) indicate that

17. Julien Freund, "La Crisi dello Stato," in *Trasgressioni*, No. 5 (September-December 1987), pp. 95-96.

18. See Gianfranco Miglio, "Genesi e Trasformazione del Termine-Concetto 'Stato'," in *Le Regolarità della Politica*, *op. cit.*, Vol. II, pp. 801-832.

19. Gianfranco Miglio, "Oltre Schmitt" (1980), in *Le Regolarità della Politica*, *op. cit.*, Vol. II, p. 757, now in this issue of *Telos*.

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the state has failed in its main objective, i.e., of succeeding once and for all, following the rise of European rationalism, to rein in politics and to resolve all conflictual tendencies within the calm of dialectical confrontation. It goes without saying that for Miglio the decline of this ideology goes hand in hand with the decline of ideologies (primarily liberalism) and of institutions (primarily parliamentarism) which have been, respectively, its intellectual cover and supreme institutional manifestation.

Burke's Fiction

Miglio considers the interference of "privatistic" structures on the public system and the intensification of the differences between "politics" (the sphere of decision, the public and conflict) and "law" (the sphere of the private, subjectivity, particular interests and mediation) as the key features of today's mechanism of political representation. As in the case of the state, there is an antinomic element here as well — something well known among political theorists. Properly speaking, representation can obtain only in the sphere of private subjective interests, and therefore can only take on the juridical role of the mandate. According to Miglio, this is demonstrated by the historical origins of the representative system (essentially of a privatistic nature) and today's crisis of political representation within parties and parliament: "The people's representational mandate is a fiction; while the relation was authentic and correct in the representation of 'strata,' which notoriously translated into an imperative mandate . . . true 'representation' lives primarily in the context of what are called fractional interests, and particularly where a strict control of the character of imperativity is possible."[20]

Historically, representation has taken on a long series of privatistic "figures" having as their objective the possibility of allowing those who are absent in a contract or a practice to express their will and to manifest their interest. In this field, the figure of the "delegate" turns into the classical one of "prosecutor." The political problem connected with representation concerns, however, not the representation of anyone who may be absent (an individual), but of a collectivity. According to Miglio, in order to meet this difficulty political representation could be seen as an act of delegation by the people (parliament) which generates the power of legislation. As long as the people behave as a delegating agent, however, it is necessary that they constitute themselves properly as such, if delegation is

20. Gianfranco Miglio, "Le Trasformazioni del Concetto di Rappresentanza" (1984), now in *Le Regolarità della Politica*, *op. cit.*, Vol. II, p. 976.

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actually "the act of an agent which transmits its own competence, all or in part, to another subject."[21] But the people, which organize themselves politically, cannot themselves be based on delegation. A "totality" (the people) cannot constitute itself as a delegating agent in relation to another totality (parliament, in the case of contemporary democracies) which would have to express its interests and will. From the juridical viewpoint, delegation is admissable only as the sum of individual delegations, i.e., of partial and "group" delegations. Thus Miglio concludes that "private juridical models . . . are not applicable to political relations, although it is done every day."[22]

This interference has intensified, and it has become obvious in its incompatibility with the development of the parliamentary institution. Born to give voice to the "estates," in opposition to the monarch, after the fall of the latter parliament has become the locus of aggregation of partial interests channelled through political parties. Above all, it has become the actual agent (though not the nominal holder) of sovereignty, which every constitution attributes to the people. The antinomies of representation emerged with the advent of representative regimes, i.e., parliament, in the sense that the mere relation of "substitution," the basis of representation in the private sense, "cannot explain the nature of political representation; what is proper to it, in fact, is the ability to evaluate, which is a function of the particular wills of the represented subjects."[23]

In light of the concrete functioning of contemporary parliaments, it follows that no sovereign power can be derived logically from the system of representation, even less can *legitimacy.* Concerned with the interests of *all* without the tie of an imperative mandate, *political* representation is nothing but a clever *fiction* — as Edmond Burke knew all too well. It is a "fiction," however, no longer able to resist the challenge of a plethora of corporatisms and the pressures of fractional groups. If politics is a "project," the creation of collective identity according to the friend/enemy criterion and decision in the community's interest, then the act of representation is the *immediate* satisfaction of expectations, localism, negotiation among various social groups, distribution of political revenues, and economic benefits by the representatives to their *own* followers.

Such being the case, what obtains today, according to Miglio, is the theoretical and institutional separation of the state from the sovereign, of

21. *Ibid.*, p. 977.
22. *Ibid.*, p. 978.
23. *Ibid.*, p. 980.

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the representation of interests from the sovereign power of decision. Miglio synthetizes the problem of contemporary political systems in terms of the need for a "double legitimation," one referring to sovereign politics, the other to the representation of interests. This formula he describes as legitimation without (political) representation.

Parliament and Democracy

Miglio's critique of parliamentarism takes the form of a demolition of Kelsen's classical theories, which identified "democracy" with "parliament."[24] The parliamentary system, explains Miglio, necessarily produces "ungovernability," for precisely the same reasons Kelsen provided in defense of the institution. The latter is based on "compromise." From this, however, agreement, responsibility, understanding or the setting aside of what divides in favor of what unites does not follow, as Kelsen assumed, but precisely the opposite. As Miglio writes: "If compromise really brought out 'what unites,' it would be altogether useless: because there is already unanimity concerning 'what unites.' To seek a 'compromise' (mediation) means to see whether the majority, by reducing its (legitimate) claims, can convince the minority to bend without fighting; but the majority (presumably the strong part) accepts the idea of compromise only when it is not too sure of its compactness and of its reasons (i.e., when it does not feel 'stronger') and therefore it is not a majority. Normally, 'to set aside what divides' means to set aside all choices and actions; it is unanimity reached on the basis of the decision not to do anything, since every decision benefits someone and harms someone else. In politics there is nothing which benefits everyone. . ."[25]

In other words, "compromise" is not the basis of every government act, in the same way that "mediation" does not constitute, along with "unanimity," the ultimate objective of parliamentary action. For Miglio, this has at least two important consequences: a) to the extent that parliament is (allegedly) based on the consensus of all (but in reality on the hegemony

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24. See Hans Kelsen's anthology, *Il Primato del Parlamento* (Milan: Giuffré, 1982), where in a 1925 essay on "The Problem of Parliamentarism," p. 174, he writes: "It is true that democracy and parliamentarism are not the same and that a democracy without parliament (the so-called direct democracy) is conceivable; but in the modern state this kind of democracy, i.e., the formation of the state will in the people's assembly, is not practical. Then it is impossible to doubt seriously that parliamentarism is the only *real* possible form in which the idea of democracy can be realized in today's social context. Thus the fate of democracy is tied to that of parliamentarism."

25. Gianfranco Miglio, "Il Mito della 'Costituzione senza Sovrano'," now in *Le Regolarità della Politica*, *op. cit.*, Vol II, p. 869.

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of a majority faction) it is not the political expression of the people's sovereign will. It may be its socio-economic reflex, but not enough to make it the supreme agency of government, the supreme decisional instance. In fact, politics is unity, agreement concerning ultimate ends, not the conflict of partial interests; b) thus parliament cannot at the same time represent the people while functioning as a political government. In fact, to represent and to govern refer to two different rationalities. In the case of representation, "a choice is all the better when reached by the interested parties."[26] One can accept "parliamentary compromise" as an institutional variant of "juridical negotiation" or a kind of contract where the "representatives of two or more organized interests (were they not minimally 'organized,' they would not have 'representatives') exchange reciprocal concessions: one side accepts to support (vote) concessions for the other in exchange for an analogous and reciprocal behavior, thus succeeding in constituting a majority necessary to 'pass' both measures."[27]

In the second case, that of the function of government, the "rationality" in question has to do with the process of formation of political "decisions." It implies a teleology. According to Miglio: this "rationality consists primarily in the functionality of the measures taken in relation to attaining the declared or implicit end."[28] In the case of political decisions, it is not a result of an encounter of the various 'parties,' but of the degree of congruence and homogeneity which the decision taken expresses with respect to the chosen end. This "coherence" is greatest when only one person, or a restricted group of people, decides the objective and the means to attain it.

The difference between the two "rationalities" (which refers to a functional and institutional divergence, since it is nothing other than a different configuration of the already mentioned opposition between the contract and the political pact) finds expression in a subsequent divergence: while the contract is *optional*, the political act (the sovereign decision) is *obligatory*. As Miglio writes: "to 'decide,' in politics, is not optional, since those in power cannot avoid 'governing.' In political obligation, the 'action' takes on a role so dominant as to render it altogether autonomous with respect to any subsequent justification. The 'private' can refuse to choose (and to enter into a contract) because this action

26. Gianfranco Miglio, "Le Contradizioni Interne del Sistema Parlamentare-Integrale," now in *Le Regolarità della Politica*, *op. cit.*, Vol II, p. 869.
27. *Ibid.*
28. *Ibid.*, p. 957.

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would only involve his particular interest. Those who hold legitimate power, on the other hand, must choose, because their eventual refusal to 'choose' (inertia or acquiescence) would translate into harm to third parties threatening their legitimacy."[29]

At this point the contradiction inherent in the functioning of the parliamentary system should be obvious. Miglio summarizes it in the following terms: "The difference between logical structures inherent, respectively, in compromise and decision is clear: only by accident can the rationality of the first coincide with the 'congruence with the end' of the second. If a parliament were truly representative, i.e., if it were composed of people coherently bearing the various fractional interests. To expect a decision, a rational governmental act, out of a compromise among these parties — out of such a negotiation — amounts to hypothesizing an event *that does not logically follow and is actually highly improbable.*"[30]

The Roots of Partitocracy

In his 1966 essay, "The Role of the Party in the Transformation of the Present Political Order," Miglio discusses the modern political party: it "is undoubtedly a typical institution of the last phase of development of that type of political order usually called the modern 'state,' and therefore of the 'representative state.' It becomes a tool of organization of the political following in view of the struggle for power among the various factions of the political class."[31]

As already indicated, Miglio's approach to politics is historical and conceptual: it deals with what is essential, the ultimate logic of political behavior and the rhythms of great institutional "transformations." This explains the apparent roughness of his logical shifts. This approach has an obvious advantage: it can locate the ultimate roots of certain institutional arrangements within their peculiar historical meaning. This is particularly the case in his analyses of the political party. Not by accident, Miglio insists on its modern specificity (the political party is, in many respects, the conceptual and institutional pendant of the state, may be destined to disappear along with it) and on its connection with a representative system. Unlike other approaches, this one allows the logical location of

29. *Ibid.*, p. 958.
30. *Ibid.*
31. Gianfranco Miglio, "Il Ruolo del Partito della Trasformazione del Tipo di Ordinamento Politico Vigente. Il Punto di Vista della Scienza della Politica" (1966), now in *Le Regolarità della Politica*, *op. cit.*, Vol I, pp. 535-536.

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the party within the framework of relations of power typical of modern political systems and the explanation of the present crisis within the more general framework of recent political transformations.

Miglio claims that: 1) the party is in an irreducible logical antithesis with the state; 2) it has historically been both the destroyer and the heir of the modern state. The two points are related and refer back to the confusion that developed in European political history between the mechanism of *political obligation* characterized by exclusivity and unity, initially embodied in the state-form, and the mechanism of corporative-professional aggregation. The initial distinction between the two "functions" has turned into a general confusion. In this context, the disruptions brought about by the industrial revolution and the advent of democratic mass politics have been decisive. In Burke's time it was still possible for a minority of aristocrats to control parliament and consequently to represent "virtually" a society hardly organized along material interests. With the development of new associational relations and with the development of the socio-economic framework, things changed rapidly; the parties entered parliament and became spokesmen of their followers — those who identified with the party and saw in it a tool of social advancement, cultural affirmation and growth of personal wealth. As can be seen from the experience of large mass-parties, adherence to a party and its program brings about a series of ties which do not only concern economic and professional interests but also ideology, programs, militant action and maybe even the idea that these obligatory and partisan ties may bring personal benefits and material advantages. Within such a context, loyalty and commitment are gradually shifted from the state to the party, according to a still unfolding historical dynamic resulting in an increase in partisan aggregation and political particularism — the fragmentation of interests, their channels of transmission and their management.

According to Miglio, the most serious effect of this historical trajectory of the bind of "political obligation" — from sovereign authority to the organized group, from the state to the party — has been the progressive disintegration of public administration and of the bureaucracy which, from an abstract impartiality, has had to yield ultimately to political parties, lobbies and organized social groups.The phenomenon of partitocracy has developed within this process of deterioration. Consider the birth of *administrative consortia*: "the victory of a particular political party . . . is followed immediately by the installing, in decisive positions, of persons belonging or tied to that same party . . . this happens both in order to

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reward the faithful with advantages and political revenues (i.e., in order to fulfill the natural goal of political obligation) and to guarantee that the winning party eventually will govern."[32]

Primarily because of the instability of democratic regimes (every election entails the potential risk of losing all benefits and power), the support of "professional servants of public administrators" loyal to the state and committed to an impartial management of public affairs, is inadequate. Needed are new administrative personnel, chosen from among those bound by party relations. The occupation of every vital sphere follows this proliferation of social groups, this predominant policentrism; the decline of the sovereign function. According to Miglio, today the state finds itself reduced to a merely mediational function. It is little more than a nominal authority "lacking any autonomous coercive power and government initiative . . . it mediates conflicts among powerful particular corporations."[33]

It remains to be asked whether political particularism, of which the parties are the most mature expression, ends up overwhelming the parties themselves. In this case, how can a ruling political group effectively organize itself and carry out important tasks if the party's internal life and external activity are concerned increasingly with jobs? As an answer to this question, Miglio has recently suggested a return to anti-oligarchic and anti-partitocratic models of political plebiscitarianism to counciliar and "directoral" government techniques, to modes of recruiting political leaders based on cooptation rather than election. All of this takes into consideration the impact of electronics on electoral procedures and the democratic legitimation of sovereign authority. All these solutions seek to redefine political parties at a time when they seem to be turned increasingly into obstructionists or negative agencies.

Ex Uno Plure

Along with the political engagement within the ranks of the Northern League, during the last few years Miglio has attempted to develop a neo-federalist political theory able to explain the changes that have taken place following the fall of communism. These changes include the explosion of the neo-nationalism that has engulfed East European countries and the rise of political movements with a localistic and regionalistic focus having as their main objectives the redefinition of historical boundaries

32. *Ibid.*, p. 538.
33. *Ibid.*, p. 547.

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and institutional arrangements.[34] According to Miglio, the end of the Cold War (on the political-military level), the growing internationalization of commerce (on the economic level), the decline of ideology (on the cultural level), and the attainment of a standard of living in which the focus is no longer on elementary and primary needs, but on secondary and "post-materialistic" ones (on the social level) have brought about a radical change in the world's political scene, characterized by, e.g., the dissolution of the classical sovereign state. This powerful egalitarian and homogenizing machine has run into a major crisis with the explosion of new political subjects and the fragmentation of socio-economic interests. During the 1980s corporatism was the last theoretical effort to attempt to salvage, within a unitary political vision, a state able to arbitrate among social groups (labor unions and entrepreneurs on the one hand, government and parliament on the other). This attempt has failed, precisely because of the collapse of conditions in international politics which for half a century have allowed Europe to alternate periodically between conservative and social-democratic politics (both, however, carried out according to the managerial and centralist logic of the welfare state), without ever radically questioning the "closed national state" understood as the main motor of history and politics. [35]

1989 ushered in a drastic shift. According to Miglio, one need only think of the project of European unification elaborated in the conviction that gradually the individual member-states would have over time renounced growing chunks of sovereignty, without even imagining, instead, that tomorrow's Europe will probably be predicated not on the political equilibrium of nation-states (according to a 19th century formula), but on economic cooperation among broad regional aggregations or even among large metropolitan areas — authentic city-states, such as those which inspired Althusius between the 16th and the 17th century. On the theoretical level, the political phase that opened after the fall of

34. Miglio's more recent scholarly reflections on the subject of federalism are condensed in the following works: Marcello Staglieno. ed., *Una Costituzione per i Prossimi Trent'Anni. Intervista sulla Terza Republica* (Bari: Laterza, 1990); and "Towards a Federal Italy," in the previously mentioned special issue of *Telos* on the Leagues, *op. cit.*, pp. 19-41. For Miglio's recent political engagement, see *Come Cambiare. Le Mie Riforme* (Milan: Mondadori, 1992) and the satirical *Italia 1996. Come è Andata a Finire* (Milan: Mondadori, 1993).

35. In "*Ex Uno Plures*," *op. cit.*, p. 173. Miglio claims that "Our table of values is already decidedly post-industrial." His position on economics, the welfare state and post-industrial society is outlined in *Una Costituzione per i Prossimi Trent'Anni*, *op. cit.*, especially the chapter on the economic constitution, pp. 107-137.

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communism has seen politics move away from the pact, ideology, the centralist national state and sovereign unity, and increasingly toward the contract, exchange and plurality. This change must not be seen as a return to classical federalism (from Hamilton to Kant), which Miglio regards merely as a stage along the way leading to the birth (during the past two centuries) of strongly centralized state entities unconcerned with the particularity of the individual federal units (here the US is the most striking example).

In order to characterize the federalist tendencies which characterize the present historical phase, Miglio talks about *neo-federalism*, something profoundly different from traditional federalism: "the old federalism," he states, "rotated entirely around the '*foedus*,' a paradigmatically political 'pact,' destined to make out of a plurality of ethnic, political, cultural communities a unitary political synthesis, i.e., a national state. Neofederalism is based on the opposite idea of contract, and presents itself as a conditional '*foedus*,' temporally limited, conceived to regulate relations among sovereign or semi-sovereign communities, to allow them to attain common objectives without losing their independence. The old federalism was meant to reach the goal of unity. The new federalism, on the contrary, seeks to manage and guarantee plurality and diversity."[36]

In a nutshell, while classical federalism sought to unify heterogeneous realities in order to safeguard and coordinate them (*e pluribus unum*), neo-federalism seeks to free from the texture of the centralist unitary state the new political subjects (the region, the *Land*, the city-state, macro-regional aggregations, the enclaves) and to create plurality departing from unity (*e uno plures*), following exactly the path opposite to the one which has led to the constitution of modern national states. The victory of this neo-federalism, writes Miglio "is the victory of the contract over the political pact, over the *jus publicum Europaeum* of statist Europe. It is the affirmation of a plurality of sovereignties against the idea of sovereignty. It is a very democratic idea, because it is founded on the free will to be together. It is a new public right, and the elimination of the eternal character of the pact: we stay together for thirty years, fifty, and then we discuss everything once again." [37]

It is a vision which leaves behind the Schmittian statist decisionism (with which Miglio has been fascinated for a long time) and which is open to classical contractualism (Althusius). It is a vision which breaks with

36. Gianfranco Miglio, "La Prospettiva Teorica del Nuovo Federalismo," interview with Marco Bassani, in *Federalismo e Società*, Vol. 1, No. 2 (1994), p. 27.

37. Miglio, "Ex *Uno Plures*," *op. cit*, p. 176.

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the idea of the "primacy of politics" and sees the neo-federalist revolution as the necessary fruit of a profound economic revolution destined in the immediate future to intensify automation, to exalt "the individual role of those who undertake and organize economic activity,"[38] to gradually checkmate traditional labor unions and to challenge the values of classical industrialism (egalitarianism, security, solidarity) — values which by and large have constituted the ideological framework of the modern state, especially its "Keynesian" variation. This account can be seen as a recyling of extreme libertarianism. In reality, however, it captures well the changes Western societies are undergoing, while offering a recipe — neo-federalism — which subverts that cultural conservatism which seems to paralyze many political forces and most intellectuals.

Conclusions

What, then, is Miglio's challenge? At least three. First, there is the radicalism with which he has explored a terrain which Schmitt had not even remotely approached. The central idea of *The Concept of the Political* was the decline of the state as a model of political unity, the end of an epoch in which all juridical concepts were tentatively cast in terms of the sovereign state.[39] For Schmitt, the relativization of the state was the conclusion of his reflection, not his starting point. He remained the victim, so to speak, of the formal splendor of that masterpiece of European juridical civilization represented by the sovereign national state. The only serious effort to conceive a post-state political order resulted in the clumsy elaboration of an imperial model predicated on the notion of "large spaces" (*Grossraum*).[40]

Many of his students have also remained prisoners of the "classical

38. Miglio, *Una Costituzione per i Prossimi Trent'Anni*, *op., cit.*, p. 131.

39. According to Carl Schmitt: "the era of statism is now coming to an end. . . . Along with it there is a decline of the whole superstructure of concepts dealing with the state, raised by a Eurocentric science of national and international law, during the course of over four centuries. The state as a model of political unity, as holder of the most extraordinary of all monopolies, i.e., of the monopoly of political decision, this creation of European formalism and of Western rationalism, is about to be dethroned." See the "Preface" to the 1963 edition of *The Concept of the Political.*

40. For the theory of *Grossraum*, see Carl Schmitt, *Völkerrechtliche Grossraumordnung mit Interventionverbot für raumfremde Machte. Ein Beitrag zum Reichsbegriff im Völkerrecht* (Berlin-Wien-Leipzig: Deutcher Rechtsverlag, 1939). On the difference between Nazi geopolitics and the doctrine of *Grossraum* developed by Schmitt, see the my "Introduction" to the anthology of Carl Schmitt's essays, *Unità del Mondo ed Altri Saggi*, *op. cit.*, pp. 7-65. The doctrine of *Grossraum* was further developed and implicitly rejected by Schmitt in his key text *Der Nomos der Erde* (Köln: Greven Verlag, 1950). For an original and fruitful utilization of the notion of *Grossraum,* see Paul Piccone and G. L. Ulmen, "Schmitt's 'Testament' and the Future of Europe," in *Telos* 83 (Winter 1990), pp. 3-34.

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character" of the state.[41] As for Julien Freund, the first to accept fully the idea of a radical disassociation of the "political" from its particular historical manifestations, he seems to have shipwrecked on a radically conflictual vision of political behavior, unable to rise above the domain of sociology andpolitical philosophy to that of constitutional theory.[42] Miglio, on the other hand, has been the first to bring to its extreme consequences — on the institutional, juridical and theoretical level — the idea that the state has exhausted its historical trajectory by developing a series of alternatives of which the most significant is undoubtedly his post-state federalism.

Secondly, his unfinished project of elaborating a pure theory of politics deserves serious attention. It is an attempt to develop a systematic elaboration, along formal lines, of the concepts and categories determining political behavior, searching for morphological, structural and behavioral "regularities" which render politics "autonomous" with respect to other spheres of human behavior. This is an ambitious project which seeks to keep theoretical analysis within cognitive boundaries rigidly fixed by empirical research and historical investigation. In this sense, its most illustrious precedent is Julien Freund's *L'Essence du Politique*. But while the latter remains a first philosophical effort, Miglio's account represents the mature fruit of a long and scholarly reflection concerning politics and its rules.[43]

Finally, it should be pointed out that Miglio, in opposition to the prevalent tendency in contemporary political science, has encouraged the relaunching and reevaluation of the European realist political science tradition, focused more on historical comparison and conceptual investigation than on empirical-statistical generalizations typical of today's comparative politics. Miglio's political science can be characterized as

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41. Consider the jurist Ernst Fortsthoff, who explicitly denounced the *horror vacui* opened up by the idea that the state, as an historical product, was destined to end. Cf. Ernst Forsthoff, *Stato di Diritto in Trasformazione* (Milan: Giuffré, 1973).

42. See Julien Freund, *Sociologie du Conflict* (Paris: Presses Universitaires de France, 1983).

43. Freund, *L'Essence du Politique*, *op. cit.*, first appeared in 1965. It was Freund's doctoral thesis submitted in the Sorbonne under the direction of Jean Hippolite and Raymond Aron. It is a bulky first work with a distinct speculative tone. Only subsequently, probably under the influence of Max Weber, Freund adopted a more sociological and less philosophical approach. Miglio, on the other hand, has always been inspired by a strong political perspective in relation to political philosophy and has always held, following Mosca, that only the accumulation of vast historical material can allow the political scientist to formulate valid hypotheses and predictions with a minimum of scientific foundation. As with De Maistre, history for Miglio is the laboratory of the political scientist.

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"conceptual," i.e., very attentive to the historical and semantic transformations undergone over time by the terms through which, in the West, and only in the West, politics has been thought and interpreted — an approach very close to *Begriffsgeschichte*, thus altogether different from the trends which have dominated post-WWII academic political science. From this viewpoint, Miglio's contribution remains "marginal" or, better, heterodox, and in many respects eccentric. It deserves, however, much more attention than it has received so far.

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Beyond Schmitt[1]

Gianfranco Miglio

Carl Schmitt's fundamental thesis is that the history of the "modern state" is characterized by a long series of "neutralizations." As soon as they are carried out, however, these neutralizations release an ever more intense conflictuality. By constituting itself as that organization of power able to deprive theological debates of their political significance and, through a new definition of political obligation, end the religious civil wars, the modern state presented itself as a neutralizing structure from the very beginning. The Christian religion, which had become the foundation of friend-enemy configurations tearing apart the existing order and the legitimacy of the legal structure, was degraded by the state from a guide for all European humanity to a private matter — to a body of subjective beliefs incapable of generating political behavior. The longing for a neutral sphere, the eagerness to build a framework capable of putting an end to conflicts, to eliminate enemies and thus provide everyone with "security, clarity, understanding and peace" (which for Schmitt was the essential cause behind all spiritual upheavals during the following four centuries), was not only already present at the genesis of the modern state but became embodied in it and determined the direction of its development.

The state, which presented itself and developed as the only political subject, was driven by its very nature to "normalize" politics and to attempt to translate it into a series of legal procedures: the ultimate goal being self-neutralization — the definitive depoliticization.

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1. Originally published in *La Politica Oltre lo Stato: Carl Schmitt. Atti del Convegno Organizzato nell'Università di Padova il 22-23 Aprile 1980* (Venice: Arsenale Cooperative Editrice, 1981), pp. 41-47; now reprinted in Gianfranco Miglio, *Le Regolarità della Politica, Scritti Scelti Raccolti e Pubblicati Dagli Allievi* (Milan: Giuffrè , 1988), Vol. II, pp. 751-760. Translated by Paolo Morisi.

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Every step toward this objective, however, marked the emergence of new conflicts inside and outside the state. They promoted the multiplication of reasons for direct confrontations, which became all the more violent the more impressive and profound the previous neutralization. The attempt to attain an unquestioned and permanent reconciliation failed and state power fell victim to that spiritual tendency toward absolute tranquillity and the suppression of every possibility for struggle it had embodied and developed: "in the 19th century, first the monarch and then the state become neutral entities. With the liberal doctrine of *pouvoir neutre* and of the neutral state, a chapter of political theology comes to a close — a chapter in which the process of neutralization finds its classic formulas since now it has also reached the decisive point, political power."[2]

When this happens, the state's long efforts to produce a legal order able to resolve every conflict within a unity seeking to raise itself to the level of a system turns out to be useless. When the state becomes unable to capture and further synthesize the tensions threatening it, the identity between state and politics breaks down. The state loses the monopoly of politics and the latter expresses itself according to ways and contents outside every possible reassembly within the state. New subjects and new "friend-enemy" configurations take over politics in and against the state, burdening it with an intensity impossible to neutralize. Since its syntheses are no longer viable, the state ceases to be the subject and becomes the object of the most political of all wars: *the global civil war.* The classic figure of the state, i. e., the state as a monopoly of politics and as a project of de-politicization vanishes, dragging along with it "legal civilization." Politics now obtains beyond the state and the latter turns out to be only a transitory and transcended manifestation of politics.

While certain of this outcome, Schmitt cannot free himself of the nostalgia for the equivalence of state and politics. He cannot ultimately give up the secure rational guarantees provided by this equivalence. His legal background keeps him bound to an outlook tied to the modern European state and prevents him from regarding the collapse of the *jus publicum Europaeum* as irreversible. While Schmitt's reluctance to propose *Weltbürgerkrieg* as the ultimate outcome of the state and its shipwreck is understandable, political science must take this realization as its value-free point of departure and move decisively beyond the boundaries of Schmitt's thought. To deal with "politics beyond the state" means to wade into a territory unknown to Schmitt.

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2. Carl Schmitt, *The Concept of the Political*, tr. by George Schwab (New Brunswick, Rutgers U. Press, 1976).

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To explore this new territory it is necessary to give up the idea that political relations can be converted into legal relations: law and politics have always been two autonomous and heterogeneous realities. It is extremely difficult (and maybe impossible) to identify ties between them which would allow anything more than structural interferences. Politics and its categories sink their deep roots in a type of obligation which cannot be reduced to obligations that generate legal relations and categories. Modern legal theory's task, i.e., to transpose and exhaust politics within the legal order, turns out to be altogether utopian and doomed to failure from the very beginning.

The theoretical consequence of this distinction is essential and turns out to be fatal for an entire cultural tradition. To the extent that law obtains entirely within the dimension defined as that of the "private," i.e., the contract, it is contradictory to speak about "public law" because there is only *private law.* It is impossible to move from the *contract* to the *pact* upon which political obligation is based. The loyalty pact obtains in an altogether different domain and generates modes of behavior absolutely different from those generated by contractual relations. Thus the problem of political science no longer has to do with their illusory and misleading convertibility, but with studying the nexus which gradually develops between these two realities, their continuous interaction and their constant tension. Political and contractual obligation come to juxtapose one another to the point of forming a texture which stays united thanks to the essential difference between its two constitutive moments. Tönnies prefigured this structure and contraposed community to society. His mistake, however, was to see these two forms of associative relations as succeeding each other historically, while instead they have to be considered as perpetually interwoven entities which reveal their meaning only in their interconnectedness.

Clearly, except for their autonomous and non-political reality, and the fact that they can be based on the rule *pacta sunt servanda,* all features of the contract must refer to political obligation and are dependent on it. But the activity the political "leadership" carries out in favor of the reconciled "friends" is to guarantee the rule *pacta sunt servanda*, thus making the contract possible. All contracts implying future services require an external political guarantee, i.e., they can only take place within a previously pacified area permanently subjected to the fundamental rule according to which every promise must be kept. All relations which imply a long term exchange require a prearranged political protection.

Political pact and contract must be understood as rigorously distinct so as to make possible understanding the "modern state" in a way different

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from all interpretations provided so far. As the legal state (*Rechtsstaat*), the modern state is a construction based entirely on the contract and therefore grounded within the non-political area of the "private."

In essence and in its many historical figures, the state is a complex of services: a gigantic complex of contractual relations. To use the traditional distinction between state and society, but considering it as a distinction between the political and private sphere, it can be claimed that the modern state is indistinguishable from society. Rather, it is the society itself. As paradoxical as such a thesis may appear, it alone succeeds in explaining why politics has developed along lines outside and beyond the state. The modern state is synonymous with "normality." Its whole structure is produced in zones external to the political pact and its powers are regular and regulated powers, i.e., "ordinary power." To the extent that it is independent of the normality of the contract, the power that originates from the political pact turns out to be an "extraordinary" power — a power that makes decisions, with exceptional means, about the exceptional case. All major political thinkers accept this definition of political power. Not only for Bodin, but also for Pufendorff, Locke and even Montesquieu, political power is "decisional." Free of all normative ties, it determines and resolves exceptional cases.

It is important to note that political power does not decide about an objectively given and determinable exceptional case. The exception is itself a decision, an "invention" of power which, precisely in so doing, reasserts its extraordinary and extra-juridical nature. The creation of the state of exception means, in fact, the reintroduction of political obligation. It is a decision through which the political "leader" reasserts his role with the greatest possible intensity and, proceeding to identify his followers, constitutes a new group and new polemical contrapositions. By creating a different enemy and a different conflictual front, the exception allows the renewal of the criteria of political aggregation and makes it more compact and combative.

In this context, it is possible to understand the dynamics resulting in the genesis of values, their breakdown and decline. Values are the web in which political obligation is embroiled, and every value position is also a political position. The creation of a new value seeks immediately to destroy existing political arrangements. Thus the values through which the modern secularization process takes place come about polemically against the predominant religious or mundane values and function as real arms able to confound traditional political obligation, to deprive the

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dominant class of the loyalty of its followers.

All values are directly political. Politics is a struggle against an enemy, while simultaneously insuring a stable following of "loyal friends." It constantly flares and grows through the invention of ideologies capable of constituting a sure point of reference and of providing unequivocal and conclusive answers to all problems. "Friend-enemy" groups arise through ideologies dealing with the very roots of human existence, showing the constant danger to which it is exposed and, at the same time, indicating the way through which man can regain security concerning his life and destiny. Thus ideology rises and sets "historically." It is "true" within a given historical period and lacks persuasive meaning in another. If all ideologies inevitably exhibit an internal discrepancy between interpretation and reality, this discrepancy is not enough to determine this eventual obfuscation and decline and the need to substitute them. An ideology becomes false only when an opposing political class undertakes to widen the difference between interpretation and reality in order to validate and therefore unify its own proposal in the political sense.

Who really elaborates ideologies? Not the political class which confines itself to embracing an already elaborated ideology (although making the "final" decisions), but the intellectuals. In a very clear way, since the beginning of the modern era (Weber), the intellectuals have played this role, not (generally) in order to legitimate the existing power but to undermine and destroy the ground on which the dominant class is based. The intellectuals form an autonomous group which, through the critique of existing values and the proposal of alternative ones, leads to a specific and decisive form of struggle.

Here the structure of political obligation reveals itself in all its complexity: between political class and its followers it is necessary to locate, in an intermediate position, a third layer, different from the undetermined and passive mass of followers: the "active" group of producers of ideologies, the "helpers," the "holders" of "subordinate" power.

The problem of "bureaucracy," as well as the problem (both in the socialist countries of the East and in Western political systems) of the middle class can find in this tripartite structure of political obligation a proposal for a satisfactory solution. The "middle class" is characterized by a "political revenue" that is a concretization of private generic expectations concerning the future, which constitute the very object of political obligation. In fact, the "warranty on the future" constitutes the main aspect of the political obligation. One enters into political obligation only in view of a

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"global" warranty that all future needs will be met. The greater the expectation for the future, the more a political system will generate internal tension and external aggressiveness. The postponement of the advantages is accompanied by the conviction that only in this way can man really satisfy all his future needs. However, if there is no political obligation without the image of the "postponed" return without a utopian ideology, the problem of time becomes the fundamental theme political science must confront, a theme that can be faced only on a *psychological* terrain, i.e., by the "psychology of the political."

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Beyond Schmitt? Reply to Miglio

Gary Ulmen

On more than one occasion in his later years, Carl Schmitt expressed admiration for the work being done by Italians on "the state." On one occasion in particular, I remember him surrounded by recent Italian books, all dealing with political themes, some of which about himself personally and at least one of which by Gianfranco Miglio. I have no reason to doubt that Schmitt described Miglio (as reported by Ernst Jünger) as "one of the most cultured men in Europe," but this is hardly a critical judgment on Miglio's thinking. I also have no reason to doubt that Schmitt found Miglio's thinking engaging (if not convincing), since Miglio was addressing issues of vital concern to Schmitt. But whether Miglio will be remembered, as Alessandro Campi claims, as "one of this century's leading political scientists," remains to be seen. The following will only evaluate Miglio's article, "Beyond Schmitt," and Alessandro Campi's "Beyond the State: Gianfranco Miglio's Challenge."

Miglio begins by claiming that Schmitt's fundamental thesis is that the history of the "modern state" is characterized by a series of "neutralizations." His reference, of course, is to the lecture Schmitt delivered at a conference on "Culture as a Social Problem" in Barcelona in 1929 and included as an appendix to the postwar German edition of *The Concept of the Political*.[1] But neither here nor elsewhere does Schmitt refer to the "modern state." Once I mentioned the "modern state" in conversation with Schmitt. He responded: "There is no modern state. There is only the state." He meant that political institution which arose in the 16th century and lasted until the 20th century. Even though the word "state" was cavalierly applied to political entities predating these centuries (e.g., in classical Greece) and existing

1. Carl Schmitt, "The Age of Neutralizations and Depoliticizations (1929)," tr. by John P. McCormick, in *Telos* 96 (Summer 1993), pp. 119-129.

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far beyond Europe (e.g., in China) and even though it became the political model for all sorts of political configurations around the world, for Schmitt the state was not a general category but a particular European accomplishment — the triumph of European rationalism. As the main agent of secularization, it was also the main agent of modernization. Thus the term "modern state" was historically redundant. For Schmitt, the state was circumscribed both geographically and historically; it began to decline at the end of the 19th century, together with the *jus publicum Europaeum* and the system of international law based on it — the *nomos* of the earth.

Since on more than one occasion Schmitt stated that "a historical truth is true only once," he had no doubt about the demise of the state and certainly entertained no notion that it could or should ever be revived. Thus it is absurd to claim, as Miglio does, that Schmitt "cannot free himself of the nostalgia for the equivalence of state and politics" and that "his legal background keeps him bound to an outlook tied to the modern European state and prevents him from regarding the collapse of the *jus publicum Europaeum* as irreversible."[2] No doubt following Miglio, Campi makes an even more questionable claim: "For Schmitt, the relativization of the state was the conclusion of his reflection, not his starting point. He remained the victim, so to speak, of the formal splendor of that masterpiece of European juridical civilization represented by the sovereign state."[3] This is incorrect. The "concept of the political" and all of Schmitt's mature thinking presupposes the "relativization of the state." It is not the conclusion but the starting point of his thinking about political matters. To say that Schmitt did not think beyond the state is to misunderstand his project.

Schmitt was an extremely unsentimental man. He never confused analysis with nostalgia. Miglio's claim to have thought "beyond Schmitt" and Campi's statement that "the only serious effort [by Schmitt] to conceive a post-state political order resulted in the clumsy elaboration of an imperial political model predicated on the notion of 'large spaces' (*Grossraum*)" only obfuscate a project not yet fully understood. Campi even goes so far as to claim that the "doctrine of *Grossraum* was further developed and implicitly rejected by Schmitt in his key text, *Der Nomos der Erde*.[4]

2. Gianfranco Miglio, "Beyond Schmitt," in this issue of *Telos*, p. 124.

3. Alessandero Campi, "Beyond the State: Gianfranco Miglio's Challenge," in this issue of *Telos*, p. 120.

4. See Carl Schmitt, *Der Nomos der Erde im Völkerrecht des Jus Publicum Europaeum* (1950), (Berlin: Duncker & Humblot, 1974). Campi misunderstands Schmitt's intention in *Der Nomos der Erde* as well as the article by Paul Piccone and myself, "Schmitt's 'Testament' and the Future of Europe," which he calls "original and fruitful." Schmitt's *Grossraum* argument is consistent with his search for a new *nomos* of the earth.

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This is all the more unsettling, since this obfuscation comes from two of Schmitt's admirers rather than detractors.

The reason why Miglio cannot deal with *nomos* is because the very concept flies in the face of his claim of going "beyond Schmitt." The concept of *nomos* in general and Schmitt's understanding of it in particular demonstrate the artificiality of Miglio's separation of politics and law. Of course, politics is never resolved entirely in law. But that hardly justifies Miglio's contraposition of political and juridical obligation. The last is central to his self-congratulatory claim that "to deal with 'politics beyond the state' means to wade into a territory unknown to Schmitt," since "to explore this new territory it is necessary to give up the idea that political relations can be converted into legal relations; law and politics have always been two autonomous and heterogeneous realities."[5]

Only by ignoring the historical and institutional development of *nomos* in world history can Miglio write: "To the extent that law obtains entirely within the dimension defined as that of the 'private,' i.e., the contract, it is contradictory to speak about 'public law' because there is only *private law.*" He arrives at this curious notion by arguing that all political obligation is based on a pact and he uses the formula *pacta sunt servanda* as some kind of magical principle to ground all contracts. According to Schmitt, however, even "usurers and extortioners appeal to the inviolability of contracts and to the formula *pacta sunt servanda.*"[6] Schmitt's critique of *pacta sunt servanda* obtains primarily within the context of the decline of international law grounded in the *jus publicum Europaeum.* Given Miglio's denial of the existence of "public law," the logical conclusion is that he also denies the historicity of the *jus publicum Europaeum* and thus mystifies almost four centuries of European and world history. If there was no *nomos* of the earth, then there must have been universal chaos. In fact, this is what Miglio appears to be proposing when he writes: "His [Schmitt's] legal background keeps him bound to an outlook tied to the modern European state and prevents him from regarding the collapse of the *jus publicum Europaeum* as irreversible. While Schmitt's reluctance to propose *Weltbürgerkrieg* as the ultimate outcome of the state and its shipwreck is understandable, political science must take this realization as its value-free point of departure and move decisively beyond the boundaries of Schmitt's thought."[7]

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5. Miglio, *op. cit.*, p. 124f.
6. Carl Schmitt, *The Concept of the Political*, tr. by George Schwab (New Brunswick, NJ: Rutgers University Press, 1976), p. 78.
7. Miglio, *op. cit.*, p. 124.

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Attempting to go where no man has gone before, Miglio claims that "the modern state is indistinguishable from society. Rather, it is society itself."[8] Here Miglio turns Schmitt's concept of the "total state" which cannot distinguish between state and society (because everything has become political) on its head. He does so by equating the liberal state, or rather what liberalism has done to the state, with the state itself. He cannot distinguish the historical development from the *Rechtsstaat* to the *Gesetzestaat*, which is why he is unable to recognize Schmitt's critique of "motorized legislation" and legalitarianism in general. By misunderstanding the decline of the state, which is why politics has developed outside it, and by insisting on the separation of law and politics, Miglio cannot possibly understand today's historical situation. The problem of the liberal state is a problem of legality, and there may be a reason why Miglio fails to mention the problem of legality and legitimacy, which presupposes the very relation between law and politics he denies.[9]

The reason Schmitt is reluctant to propose global civil war is that such a notion presupposes transition from the real enemy to the absolute enemy as obtains in a *bellum omnium contra omnes*. Lenin, as Schmitt notes, was a "professional revolutionary of *Weltbürgerkrieg*" and accordingly made the Communist Party into the agent of absolute enmity.[10] Part of the problem here is Miglio's misunderstanding of values, which is the other side of his positivist "value-free" science. Schmitt knew all too well that all pretense of "value-freedom" is an illusion. But more to the point, he warned against value as a political category. Miglio writes: "Values are the web in which political obligation is embroiled, and every value position is also a political position."[11] As Schmitt argued, following Ernst Fortshoff, "value has its own logic."[12] The positing of value immediately implies that there are higher and lower values, and more, that the lower value may have no value and thus be worthy of extermination.[13] Miglio's claim is very problematic. Clearly, people having many different values

8. Miglio, *op. cit.*, p. 126.

9. See Schmitt's discussion of the legal manipulation of the political state by revolutionaries in "The Legal World Revolution," tr. by. G. L. Ulmen, in *Telos* 72 (Summer 1987), pp. 73-89.

10. Carl Schmitt, *Theorie des Partisanen: Zwischenbemerkung zum Begriff des Politischen* (1963) Second Edition (Berlin: Duncker & Humblot, 1975), p. 94.

11. Miglio, *op. cit.*, p. 126.

12. Schmitt, *Theorie des Partisanen*, *op cit.*, p. 80.

13. Cf. also Carl Schmitt, "Die Tyrannei der Werte," in Carl Schmitt, Eberhard Jüngel and Sepp Schelz, *Die Tyrannei der Werte* (Hamburg: Lutherisches Verlagshaus, 1979), pp. 9-41.

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can exist side-by-side without ever squaring off politically. Like anything else, values can become political, but they are not the essence of politics and are not, as Miglio claims. "directly political."

Miglio also trivializes Schmitt's "concept of the political." According to him, "Politics is a struggle against an enemy, while simultaneously insuring a stable following of 'loyal friends.' It constantly flares and grows through the invention of ideologies capable of constituting a sure point of reference and of providing unequivocal and conclusive answers to all problems."[14] First of all, Schmitt says the core of the political is not enmity itself but the *distinction* of friends and enemies, and the enemy is only the *public* enemy, which can only exist if there is public law. Moreover, this distinction is not primarily and certainly not necessarily a matter of differing ideologies. Here Miglio confuses Schmitt's notion of the dominant intellectual paradigm of a particular epoch with that informing the goals of a political class. Clearly, many wars have been fought between peoples sharing the same "truth." Moreover, Miglio keeps talking about leaders and followers as though all political life is organized along Nazi lines. "Friends" are not necessarily or even ideally "followers," and "ideologies" can be pacific as well as antagonistic.

In "Beyond Schmitt" Miglio is clearly neither on land or sea but in another dimension of *time*, which he tells us is "the fundamental problem" that political science must confront, and this can only be done by the "psychology of the political." I leave it to others to figure out what this means. Campi speaks of Miglio's "challenge," which allegedly proceeds on three levels. The first is Miglio's radical approach to life beyond the state. Here Campi mentions Miglio's views on neo-federalism, which curiously abandon the "primacy of politics" for a "profound economic revolution." He next mentions Miglio's "unfinished project of elaborating a pure [*sic*] theory of politics,"[15] whatever that might be, which he compares with Julien Freund's *L'essence du Politique* — a work not only inspired but written under the Schmitt's guidance. Finally, there is "Miglio's political science," which Campi says comes very close to *Begriffsgeschichte*. He overlooks, however, that the whole postwar project of *Begriffsgeschichte* was inspired by Schmitt and for the most part its main project has been carried out by Schmittians.

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14. Miglio, *op. cit.*, p. 127.
15. Campi, *op. cit.*, p. 121.

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Notes and Commentary:

The Swedish Model and the Conservative Revolution: Response to von Kreitor

Göran Dahl

Nikolaj-Klaus von Kreitor's article, "The 'Conservative Revolution' in Sweden," is embarrassingly self-serving.[1] The arguments are either half-truths or un-truths, the style is associative, the method constructivist. Consider how he supports his point by referring to "critics," which turn out to be 12 articles written by himself! The piece actually consists of two separate parts. One deals with the issue of *Res Publica* edited by Carl-Göran Heidegren and myself, which von Kreitor describes more or less accurately.[2] But the very first sentence is wrong. von Kreitor claims the issue "focuses on the meaning and impact of the German 'Conservative Revolution' in Scandinavia." But, in fact, it concerns only the German Conservative Revolution, and it is embarrassing to read that the reason the introductory article concludes the Conservative Revolution is "something to take into account in the future" is because the so-called Swedish model embodied the ideas of the Conservative Revolution. Rather, our conclusion is based on an evaluation of the current situation in Europe.

The second part of von Kreitor's article argues that the issue of *Res Publica* misses "the history of the ideology on the Conservative Revolution in Sweden and its relevance today." This is astonishing, in view of what he claims in the very first sentence. There is certainly a history of the reception of the Conservative Revolution in Sweden, but not the one von Kreitor thinks, i.e., that the "Swedish model" is "the most successful implementation of the ideology of the Conservative Revolution." This is pure fiction.

Traces of the Conservative Revolution in Sweden

The closest approximation to a conservative-revolutionary group of thinkers

1. Nikolaj-Klaus von Kreitor, "The 'Conservative Revolution' in Sweden," in *Telos* 98-99 (Winter 1993-94), pp. 249-259.

2. It does provide some misleading information. For example, von Kreitor intimates that the introductory article, "Den magiska nollpunkten," is mostly based on Mohler's classical study on the German Conservative Revolution. This is only half true. Mohler is only discussed at the beginning, since he is a true insider. The rest of the article discusses things such as generational factors and the dialectics between poetry and politics.

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in Sweden was probably the "young Right" in Gothenburg during the 1910s and 1920s. This group had close contacts with Germany and developed a rightist concept of modernism.[3] The most prominent member of this group was Rudolf Kjellén, one of the supporters of "the ideas of 1914"[4] and the father of modern geopolitics.[5] He was also a representative of the modernist wing of the conservative party.[6] This group remained marginal, even within the conservative party.

The most interesting person was Per Engdahl (1909-94), who became one of the leaders in the Swedish fascist movement. Even though he probably only read Oswald Spengler's *The Decline of the West*[7] and Werner Sombart's *Händler und Helden,* rather than authors such as Schmitt, Moeller van den Bruck and Ernst Jünger, he formulated a cosmology close to the ideas of the Conservative Revolution.[8] He also played a role in the relation between Swedish Social Democracy and the Conservative Revolution.

Apart from these small groups and individuals, there were hardly any conservative revolutionaries in Sweden, except for one small political group, the Socialist Party. This was a faction that broke off from the Communist Party led by Nils Flyg (an old friend of Per Engdahl) between 1937 and 1943. Solidly anti-Stalinist, this group moved closer to the ideas of Gregor and Otto Strasser, before finally becoming an appendix to the Nazi Party.[9] As a result, however, they practically lost all public support.

Social Democracy and the Conservative Revolution

Von Kreitor selects bits and pieces, some partly true, others pure fantasy, and constructs a paranoid puzzle. His main thesis, i.e., that the SAP was racist, totalitarian etc., resembles the right-wing conservative critique of the SAP.[10] The same messages have often been heard during the post-war period: Sweden is a state-socialist country with taxes so high that they amount to robbery, Social Democracy has destroyed beautiful cities, socialized the children, etc. That this was the result of the appropriation of the ideas of the Conservative Revolution, however, is something new. Guilt by association is part of von Kreitor's method:

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3. See Conny Mithander, "Reaktionär Modernism i Sverige," in Mikael Hård/ Conny Mithander, *Teknik som Diskurs. Moderniseringsdebatter i Tyskland och Sverige 1905-35* (Gothenburg: Department of Theory of Science, 1990).
4. *Die Idéen von 1914. Eine Weltgeschichtliche Perspektive: Zwishen Krieg und Frieden* (Leipzig, 1915), p. 29.
5. See, e.g., his *Världskrigets Politiska Problem* (Stockholm: Bonniers, 1915).
6. Jan Larsson, *Hemmet vi ärvde (*Stockholm: Arena, 1994), p. 63 ff.
7. Engdahl developed a voluntarist answer to Spengler's cultural pessimism in his *Västerlandets förnyelse*, two volumes (Malmö: Bok och Tidskrift, 1950-51).
8. See his biography, *Fribytare i Folkhemmet* (Lund: Cavefors, 1979). He did, however, meet Carl Schmitt in the 1930s.
9. Karl Kilbom, *Cirkeln slutes* (Stockholm: Tiden, 1955).
10. Hans Zetterberg has recently written that SAP acted like a "colonial power" which had colonized the country, especially everyday life. See *Dagens Nyheter* (August 22, 1994).

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he even translates some concepts used by Swedish social democrats into German for no other reason than to give this impression.

The ideological roots of Swedish Social Democracy had very little to do with the ideas of the Conservative Revolution. Soon after Social Democracy came to Sweden in the late 19th century, it developed into a strong social movement; its key ideas were imported from German Social Democracy. Concepts such as *Bildung*, soberness and cleanliness were emphasized in the effort to build a powerful movement with strong and well-educated members. Thus it had close relations with the two other main social movements at the time — *Frikyrko* and *Nykterhetsrörelsen* (The Free Church and the Temperance Movement). After the introduction of political democracy in 1921 (the first election where both male and female citizens could vote), it sought an electoral majority. This goal was nearly reached by the late 1920s, when radicalism — anti-capitalism, anti-monarchism, anti-militarism and internationalism — began to be abandoned. When it finally became the ruling party, in 1932, it was well-prepared. The key element in its strategy was the "historical compromise": an agreement between labor and capital paving the way for a safe and calm development of industry; a Keynesian economic policy reducing unemployment and increasing market demand; and, above all, a radical modernization of Swedish society. In short, traditional Marxist ideology was replaced by a much more pragmatic program.

The core of the SAP ideology came from modernism (removing the fetters of "tradition" understood as the old class-society) and rationalization. The key figures were Ernst Wigforss, Alva and Gunnar Myrdal.[11] The latter stressed efficiency and advocated social science. Society was seen as something like a corporation. The Myrdals were also nationalists, not in an aggressive imperialist sense, but as believers in a common project. The economy, science and education had to be rationalized to bring about a classless society. Along with all other modernist social doctrines, education was considered necessary for developing efficient and rational citizens. How does this differ from the subordination of individuals in the fascist state? In order to avoid the fascist temptation, Alva Myrdal substituted the "state" with "society" and "the general."[12] This was more than a rhetorical trick. The SAP modernists (the Myrdals and Wigforss)[13] really believed they could use the state to build a "strong society"[14] of strong, rational individuals and that this would eventually lead to the withering away of the state. For them, community, tradition, culture and primary groups were nothing but the old class society in disguise. They truly believed that conditions for human happiness could be planned and realized.

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11. Ron Eyerman, *Between Culture and Politics. Intellectuals in Modern Society*, (Cambridge: Polity, 1994).

12. Yvonne Hirdman, *Att Lägga Livet Till Rätta* (Stockholm: Carlssons, 1989), p. 110f.

13. Wigforss (1881-1977) was Minister of Finance between 1932 and 1949. A brilliant writer and a Keynesian, he was the main architect of the policy of comparatively high taxes as a means to achieve the egalitarianism of the Swedish model.

14. This term was coined by Tage Erlander (Swedish Prime Minister, 1946-1969).

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What they did not take into account was the dialectics of rationalization: the "iron cage" of modernity (Max Weber), whereby means create their own ends.

Swedish Social Democracy, however, had also a "reactionary-modernist" or "conservative" side. But this had nothing to do with the Conservative Revolution; it was related to the impact of more mainstream conservatism, fascism and Social Democracy. Crucial here was the Social Democrat Rickard Lindström (1894-1950), the editor of the social-democrat journal *Tiden* (1926-29) and a member of the SAP governing board between 1936 and 1950. He represented the party's informal nationalist group. Along with Nils Karleby, he was instrumental in the party's move from a class-party to a *Folk*-party. In two influential works, he developed nationalist and racist ideas.[15] He also supported Germany during WWII and was influenced by Hendrik de Man, the Belgian sociologist and politician who started as a radical Marxist and through Social Democracy ended as a collaborator in occupied Belgium.[16] Particularly interesting was de Man's book, *Zur Psychologie des Sozialismus*,[17] where he attacked Marx and Marxism for extreme rationalism, while reconsidering ideas from Goethe, Nietzsche and Bergson. Lindström also accepted all this and emphasized the influence of Georges Sorel.[18]

In his autobiographical work, *En Socialist*, Lindström returned to de Man: "Hendrik de Man found his way into the hearts of thousands of young workers. . . Thus 'the socialism of personality' of the young generation has taken over that kind of socialism which is based on the belief in 'the development of the economic society formations as a natural-historical process'."[19] Besides voluntarism and a belief in the young generation, this work emphasizes cultural and psychological factors as the most important determinants for the reproduction of class society. The same account can be found in Per Engdahl's autobiography, *Fribytare i folkhemmet.* The leading Swedish fascist, Engdahl also stressed the cultural barriers between classes, emphasizing that the classless society must be based on consensus, corporatism and a shared mythology — the national myth. He favorably quoted Lindström's work.

Engdahl also used to vote for the Social Democrats, and is said to have been a good friend of Ernst Wigforss and Tage Erlander. Thus there were both personal and intellectual connections between fascists, nationalists and Social Democrats. Yet the rationalist-modernist tendency within the party was the strongest, even if Per Albin Hansson[20] placed the Swedish national banner among the red

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15. See his *Socialistisk Vardag* (Stockholm: Bonniers, 1928) and *En Socialist* (Stockholm: Bonniers, 1930).
16. See Dick Pels, "Hendrik de Man and the Fascist Temptation" in *History of the Human Sciences* (May, 1993).
17. This book, as well as most of de Man's other works from the period 1926-31 were readily translated into Swedish.
18. *Socialistisk Vardag*, *op. cit.*, p. 169ff.
19. *En Socialist*, *op. cit.*, p. 118.
20. Hansson was the Swedish Prime Minister from 1932 to 1946.

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banners. This form of nationalism was subsequently strengthened during the war.

As Lars Trägårdh[21] has pointed out, there are also considerable affinities between the German concept of *Volk* and the Swedish *Folk*. They are a result of the common cultural heritage of Swedish and German Romanticism, with its emphasis on the collective as something transcending the individual. Swedish Social Democracy may very likely have taken over figures and images from conservative thinkers,[22] which is no more remarkable than the fact that the once anti-democratic conservatives took over concepts such as democracy and today even accepts the basic features of the Welfare State. The emphasis on *Folk* had to do both with a common, predominant *Zeitgeist* and a conscious strategy. *Folk,* however, was not considered in opposition to other *Folks*, as in Germany, but only to the masters — the capitalists.[23]

Racism?

Von Kreitor claims that the Swedish model was racist since the *Folkhem* only had room for the "the Swedish Racial Group" (252). This is false, and he provides no evidence to support this claim. The Tornedal Finns were not "excluded" from Swedish society. As citizens, they had the same rights and duties as others. In some places, however, they were forbidden to speak Torne-Finnish in school. This is not social "exclusion." The 1927 immigration law has nothing to do with the "Swedish model," which came into being in the 1930s. Von Kreitor claims that "even today Swedish law does not recognize the existence or even the concept of minorities." Again, this is false. The Laps have certain rights accorded in special legislation. Apparently, von Kreitor is not very familiar with the Swedish Constitution. Article 2 in Chapter 1 of *The Instrument of Government* concludes: "Opportunities should be promoted for ethnic, linguistic and religious minorities to preserve and develop a cultural and social life of their own."[24] Article 15 of Chapter 2 reads as follows: "No Act of law or other statutory instrument may entail the discrimination of any citizen because he belongs to a minority on grounds of race, skin color, or ethnic origin."[25] One may also add that there is a Discrimination Ombudsman. Many Estonians came to Sweden after WWII and started newspapers, schools etc. Many were blue-collar workers, but their sons and daughters were educated at the universities and many of them became more "Swedish" than the Swedes themselves. The same can be said of the Italians who

21. See Lars Trägårdh, "Varieties of *Volkish* Ideologies," in Bo Stråth, ed., *Language and the Construction of Class Identities* (Gothenburg: Gothenburg University Press, 1990).

22. In Germany, however, the SPD was not smart enough to do this, which left the field open for the Nazis to use it for their purposes. See George L. Mosse, *The Crisis of German Ideology* (New York: Grosset & Dunlap, 1964).

23. See Klas Åmark in Stråth, ed., *op cit.*, p. 127f.

24. *The Swedish Constitution*, Riksdagen, p. 37.

25. *Ibid.*, p. 41.

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came in the 1950s or the Yugoslavs who came in the 1960s.

Along with almost every other European country, in the 1920s and 1930s Sweden was infected by racist ideas. The worst in Swedish politics came from the *Bondeförbundet*, although some leading Social Democrats, such as Rickard Lindström, made statements which today would be considered clearly racist. This was, however, certainly not unique to Swedish Social Democrats. The most advanced institutionalization of these ideas in Sweden was the *Rasbiologiska Institutet* (The Race-Biological Institute), which was started in 1921.[26] Throughout this century, up to the Holocaust, there was a great interest in eugenics. The research carried out by the *Rasbiologiska Institutet* influenced the Program of the Agrarian Party of 1933, but also Alva and Gunnar Myrdal's *Kris i Befolkningsfrågan* — a widely read book which discusses the Swedish "race," not, however, as something contraposed to "other races." It was merely an internal concept, referring to genetics: the Swedish people should grow and become more efficient with the help of scientific expertise, and thus build a strong, rational society. Unlike Germany, Sweden never had any expansionist ambitions. The writer of *An American Dilemma* can hardly be considered a racist.

The *Rasbiologiska Institutet* was also instrumental in the formulation of the 1941 Sterilization law, which was not repealed until 1975. It was a very radical law, outdone only by Germany. It provided for the sterilization of retarded people, as well as those with an "asocial way of life" (e.g., gypsies).[27] This law is often seen as "evidence" of the totalitarian nature of the Swedish model. Broberg and Tydén argue that this law was not central to the SAP ideology. Rather, it was both a product of the predominant international mood and part of the project of modernity understood as a struggle against ambivalence.[28] In order to reduce this ambivalence, things are either/or. It is up to the master — most often the state and the scientist — to define, include and exclude. This master is a kind of "gardener," who has to watch out for bad plants. In fact, the first day-care centers were called *Barnträgårdar* (Children's Garden) in Sweden and *Kindergarten* in Germany.

Großraum?

Von Kreitor claims that "Sweden also designated Scandinavia, and above all Finland and Norway, as part of a Swedish "*Großraum.*" Who did so, and when? According to Carl Schmitt's definition, a "*Großraum*" is a territory which can secure its own borders against enemies.[29] It also has expansionist implications. Along with other nations, Sweden has had, and still has, particular national interests. So

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26. See Gunnar Broberg and Mattias Tydén, *Oönskade i Folkhemmet* (Stockholm: Gidlunds, 1991).
27. See Bosse Lindquist, *Förädlade Svenskar* (Stockholm: Alfabeta, 1991).
28. Zygmunt Baumann, *Modernity and Ambivalence*, (Cambridge: Polity, 1991).
29. Carl Schmitt, *Völkerrechtliche Großraumordnung* (Berlin: Deutsche Rechtsverlag, 1941).

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far, they have taken the form of "neutrality." This, however, has never been a neutral "neutrality." During WWII Sweden had to make compromises with Germany in order to reduce the risk of a German occupation, and during the Cold War it was practically a member of NATO. But this does not mean von Kreitor is right.

Prussian Socialism?

According to von Kreitor, Swedish Social Democracy "was heralded as 'the third way,' a social formation between capitalism and socialism. It was very similar to Prussian socialism." While "Prussian socialism" simply attempted to develop national mobilization, the Swedish model sought a "mixed economy" and practiced classical Keynesian state-interventionism. The *Saltsjöbadsavtalen* — the attempt to reach a compromise between labor and capital — is said to have "outlawed strikes." This is not entirely true. Strikes were not outlawed, but the local sections of the various unions could be punished if they struck before central agreements were reached. Thus there seems to have been very little "Prussian socialism," and much more of an interventionist state and a common interest in economic growth.

Volksgemeinschaft, *Organic Whole, etc.?*

After correctly identifying the concept "*Folkhem*" (people's home) as the most central image in the Social Democrat project, von Kreitor argues that the project prefigured a "racially defined *Folkgemenskap* (*Volksgemeinschaft*)." The Nazi concept *Volksgemeinschaft* was never used in official Swedish Social Democratic literature. Furthermore, *Folkhem* has nothing to do with racism. This concept was originally developed by Kjellén in the 1910s. It was then picked up by the SAP leader Per Albin Hansson, who used it in a speech in parliament in 1928. It was to be a safe place for all the people in what was at that time a poor, undeveloped country. The people (*Folk*) did not constitute a racial unity but a poor mass majority in Swedish society. The Social Democrats knew that they had to appeal to more than the working class in order to build a society predicated on political, social and economic democracy. According to Hansson, the *Folkhem* was to be a classless society: "The foundation of a home is community and we-feeling. . . . In the good home we have equality, care, co-operation and help. . . . This means breaking down all social and economic barriers that now divide the citizens into privileged and neglected, ruling and dependent, rich and poor."[30] This is a radical, egalitarian vision, not a racist or totalitarian utopia. Whatever can be said about the Conservative Revolution, it can hardly be accused of supporting the idea of equality. Furthermore, the rationalist-modernists wing of the party, such as the Myrdals, never, or at least very rarely, used the concept of *Folkhem*. Rather, they preferred to talk about "the new man," "the new morality"

30. Per Albin Hansson's speech in the Swedish parliament (*Riksdag*) in 1928, quoted by Yvonne Hirdman, *Vi Byggde Landet* (Stockholm: Tidens Förlag, 1990) p. 186f.

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and "the rational society." The Myrdal project of overcoming the old and the metaphysical in order to build a rational new society, morality and man produced a new metaphysics. This was common among the legal thinkers associated with Hägerström.

When all is said and done, von Kreitor provides a deeply self-contradictory account: after trying to prove that the SAP was based on the Conservative Revolution, he claims that the breakdown of the Swedish model may lead to a renewed interest in the Conservative Revolution. While the second may be true, the first is totally wrong. Under Social Democracy, Sweden was neither a technocratic, totalitarian state, nor a paradise. It was plagued by the problem of a rapidly growing bureaucracy that transformed citizens into clients and patients. There were also problems with the legislature. On this point, von Kreitor is absolutely right. The so-called "general clause" protected civil servants from the justice system.

Von Kreitor writes as if he is a lonely voice in the desert, revealing the truth. But a more balanced, critical and informed analysis of the Swedish model has also a long tradition in Sweden. This tradition (some of whose thinkers were SAP members) has emphasized concepts such as civil society and autonomy, and have called for strong legal protection of individual rights against the state. But this critique does not overlook the positive side of solidarity and equality. Von Kreitor's explanation of the collapse of the Swedish model is also questionable. It was not merely a matter of "corruption." As a part of the global world economy, Sweden has fallen victim to the dramatic decline in economic growth. This has meant the disappearance of two important preconditions of the Swedish model: an economy that could be controlled on a national level, and an ever-growing economic pie whose new pieces could be consumed in the form of transferences and new projects.

Yet the Swedish model did not disappear for economic reasons alone. During the 1980s there was a growing discontent with its paternalist aspects — bureaucracy, regulations, lack of alternatives, etc. This is one important reason for the 1991 electoral loss, when a liberal-conservative government took over. During their three years in power they began dismantling some vital parts of the Swedish model — a process which, however, had already been started by the Social Democrats. But the Social Democrats came back in 1994 and have now formed a new government. The main reason for their comeback seems to have been a certain nostalgia — the need for security and the rebuilding of the health sector. This is unlikely to result in any dramatic changes. The differences between Social Democrats, conservatives and liberals today are relatively minor. More important, both for the future and for an the eventual breakthrough of radical conservative ideas, is the referendum in November 1994 concerning whether Sweden should join the European Union. The strongest argument of the people opposing it is the national myth — the fairy-tales of *Folkhem*, neutrality and the Swedish model. It is a sign of the times that Bo Cavefors, a former leftist who

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published translations of Benjamin, Lukács, Brecht, Marx etc., now has a new journal, *Svarta Fanor*, which is full of articles on Schmitt and Ernst Jünger. Cavefors now writes that "the enemies of capitalism and liberalism must fight not only politically but also militarily." Even if this journal is read only by a few people, it is a document of an emerging *Zeitgeist*. The most extreme positions usually reveal something about "normal" structures of thinking.

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The Political Idea of the People's Home: Reply To Göran Dahl

Nikolaj-Klaus von Kreitor

After shifting from Marxism to Swedish nationalism, Göran Dahl now wants to market a somewhat plausible package of "people's home" mythology as a blue-yellow social utopia in an otherwise "sinful" word. He is not, however, very clever. Had he been satisfied with the positive review of *ResPublica* — the special issue on Conservative Revolution[1] — many skeletons from the people's home may have remained hidden in the closet. As a Swedish professor, he is an *ämbetsman* — or civil servant in the Swedish tradition which defines teachers not as intellectuals but as bureaucrats whose duty is, first of all, to serve the state. Thus, he has done what he is supposed to do: defend the state. Basically he does not want a debate but to *end* debate by delivering mythological panegyrics. Dahl believes that his reply repudiates several claims in my article: that 1. the Swedish Model was based on racism; 2. it resembled "Prussian Socialism"; 3. it was a corporate society; 4. there was discrimination against minorities in Sweden; and 5. Sweden was in fact a *Reichstaat.*

Racial Policies

Dahl claims that the Swedish model was never racist and that minorities were accorded the same rights as the majority. Although, according to Dahl, Sweden was infected with racist ideas, those ideas were only part of the project of modernity and the struggle against ambivalence. Then he proceeds to list features of the Potemkin Stage of the "people's home," in the belief that readers unfamiliar with the Swedish history will believe them. His claim that concepts about Swedish "race" and racial revitalization, developed by Alva and Gunnar Myrdal, were perceived not "as something in relation to 'other races' but as an internal concept, referring to genetics" borders on the comical. Thus the Myrdals, concerned with building a strong and healthy society with the help of eugenics, were simply a sort of a vitalistic Art Deco ornament on the otherwise perfect "people's home" facade.

The main point of Alva and Gunnar Myrdal's 1934 book *Kris I Befolkningsfrågan* (*Population Crisis*) was the preservation and regeneration of the Swedish race.

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1. Nicolaj-Klaus von Kreitor, "The Conservative Revolution in Sweden," in *Telos* 98-99 (Winter 1993-Spring 1994), pp. 249-254.

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According to Huntford, "Professor Gunnar Myrdal and his wife Alva at that time (1934) had intimate connections with the German academic world and their study was based on similar work carried out in Germany by Nazi ideologists. Both Myrdal and his German mentors were perturbed by the dangers to their respective nations of a falling birth rate, seeing in it a threat of depopulation. The professor was then a Nazi sympathizer, publicly describing Nazism as the movement of youth and the movement of the future. In Myrdal's defense, it must be pointed out that, whatever his other propensities, Hitler did have advanced ideas on social welfare, and that the social ideology of the German Nazis and the Swedish Social Democrats had much in common . . . Nazi thought, often incognito, permeated Swedish life."[2]

The Race-Biological Institute opened in 1921 in Uppsala to carry out research in eugenics and race. What Dahl does not mention, is that the institute remained in existence until the early 1960s, long after the Holocaust had become well-known. In a footnote, Dahl quotes Gunnar Broberg and Mattias Tyden's book *Oönskade i Folknemmet* (*Unwanted in the People's Home*) which deals with racial policies in Sweden. The Swedish "Sterilization Act" dating back to 1935 (not 1941) was enacted less than two years after a corresponding law in Germany, mandating sterilization of racially and genetically defective individuals.[3] The term "asocial way of life" had clearly racial implications. It referred not only to gypsies, as Dahl claims, but also to traditional minorities such as Tornedal Finns and the Lapps. That law was repealed only in 1975. All Dahl says is that the law was "an aspect of the project of modernity." So were probably Auschwitz and the other concentration camps.

Afraid of what was euphemistically called an "invasion of non-Aryan immigrants," in 1938 the Swedish government re-negotiated with Germany the then existing provisions for visa-free travel between both countries as well as the issue of issuance of German passports to non-Aryans. The result of these negotiations was that Germany began stamping the letter "J" on the first page of all passports issued to German Jews. "J" passport holders were exempted from free travel between the two countries and Swedish visas were no longer issued to such persons.[4]

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2. Roland Huntford, *The New Totalitarians* (New York: Stein & Day, 1980), pp. 62-63.

3. The Swedish law was a replica of the German "Law for the Prevention of Genetically Diseased Offspring," the sterilization law, which Nazi Germany passed on July 14, 1933. See Robert N. Proctor, *Racial Hygiene* (Cambridge: Harvard University Press, 1988), p. 96. The first sterilization law was passed in the US, in 1907 in Indiana and latter in twenty-seven other states. By 1939 more that 30,000 people had been sterilized, nearly half of that (12,941) in California. Similar laws were passed also in other countries — in the Swiss Canton of Waadt (1928), in Denmark (1929), Norway (1934) and latter in ten other countries. See Proctor, *op. cit.*, p. 97

4. For many years after WWII all diplomatic documents, government decisions and administrative ordinances were kept secret — a secrecy motivated by the correct "assumption that Sweden's roll in the creation of the 'J' passport system could be regarded as participation in the racial politics of Nazi Germany." See Hans Lindberg, *Svensk Flyktingpolitik Under Internationellt Tryck 1935-1941* (Stockholm: Allmänna Förlaget, 1973), p. 158.

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In compliance with an amendment to the Child Welfare Law, in 1979 it became easier to take children into the custody of the state in case the parents were deemed unfit.[5] Often those children were from families belonging to the Finnish minority as well as from other immigrant families, and they were always placed for adoption with Swedish families.[6] This practice became well known in conjunction with a case in which a child of a woman, baroness Eva Aminoff, from a prominent Finnish family, was placed in state custody awaiting adoption. Her case led to widespread publicity and engaged many people in her defense.[7] The case also generated considerable international publicity after the West German TV featured it and both *Der Spiegel* and *Frankfurter Allgemeine Zeitung* reported it. The case went to the Council of Europe's Commission on Human Rights. Another case in which a child was taken into custody for adoption by a Swedish family involved "the unfit father" Alexander Weiss, a well-know immigrant writer, brother of the even better known writer Peter Weiss.

Minorities

The position of minorities in Swedish law has been best summarized by one of Sweden's foremost jurist, the late Gustav Petren: "Swedish legislation does not recognize the concept of minorities. The concept is not defined in any legislation. That notwithstanding minorities do exist." Consequently, "Minorities do not have a special legal protection."[8] The traditional Swedish position has been not to recognize officially any minorities on its territory. That position was related to the negative experience with the minority provisions in the Versailles treaty, which were viewed in Sweden not only as impositions by the victorious powers but also as pretexts for intervention in the internal affairs of other countries. The implicit, although unofficial, position had to do with the need to safeguard the

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5. The law regarding "asserting state custody over children" have been analyzed in Lennart Hane's *Förstatligandet av Våra Barn* (Stockholm: Serien Förmyndarstaten, 1980).

6. During the same time "The National Swedish Social Welfare Board" published a report showing a sharp decrease of male fertility among Swedes. See Hans Lohman, *Psykisk Hälsa Och Mänsklig Miljö* (Stockholm: Socialstyrelsen, 1973).

7. See Brita Sundberg-Weitman, "Samhällsvåld Mot Barn," in *Svenska Dagbladet* (April 12, 1981); Karl-Gustav Köhler "Det Räcker Med Ett Telefonsamtal," in *Dagens Nyheter* (February 19, 1981). Aminoff's case had important implications. On November 12, 1979, her son, Aleksi Aminoff, managed to fly to Finland from where he had been kept in custody. On November 14, 1979, four Swedish lower civil servants traveled to Finland, kidnapped the child, and brought him back to Sweden. In other words, not only did Swedish civil servants exercised jurisdiction in Finland, in violation of Finland's territorial sovereignty, but they also committed a criminal act in a foreign country. This incident illustrates how the Swedish *Grossraum* is assumed to extend over Finland. See also Rune Andersson, *Rättsstat i Upplösning* (Stockholm: Contra Förlag, 1981).

8. Gustaf Petren, Minoriternas Rättställning I Sverige in David Schwarz, *Identitet Och Minoritet* (Stockholm: Almquist & Wiksell, 1971), pp. 28, 31.

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integrity of the state and to preserve the racial and ethnic homogeneity of the "people's home."

In international law the existence of minorities is not a question of legal recognition but one of fact. The first definition of the concept of minority was provided by the Permanent Court of International Justice July 31,1930. "By tradition . . . the 'community' is a group of persons living in a given country or locality, having a race, religion, language and tradition of their own and united by this identity of race, religion, language and tradition in a sentiment of solidarity. . . The existence of communities is a question of fact; it is not a question of law."[9] In other words, if the majority state does not recognize a minority, the minority does not cease to exist, it exists as a matter of fact. The Swedish position has been that since minorities are not recognized, they simple do not exist. The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities during its fifth session adopted a resolution defining minorities for purposes of UN protection: ". . . (i) the term minority includes only those non-dominant groups in a population which possess and wish to preserve stable ethnic, religious and linguistic traditions or characteristically markedly different from those of the rest of the population; (ii) such minorities should properly include a number of persons sufficient by themselves to preserve such traditions and characteristics."

Excluded from the definition were minority groups which do not need protection, i.e., groups which, although numerically smaller than the rest of the population, constitute the dominant element in it. During its sixth session the commission de-emphasized the subjective component of the definition — "wish to preserve ethic, religious or linguistic traditions or characteristics," since dominant groups which did not wish to extend equal rights to certain minorities could justify their action by claiming that those minorities did not wish to maintain their status.[10]

The Swedish official position has been that the Tornedal-Finns are altogether lacking in cultural ability, and thereby in any culture-forming and culture-preserving power. Tore Modeen, the advocate of Swedish nationalism, takes this racist concept as a foundation not only for his dubious distinction between ethnic and national minority, but also for his absurd claim that Tornedal-Finns are not a national minority and therefore not entitled to protection mandated by international law. "The question of difference between ethnic and national minority can be summarized as follows: a national minority is a minority with developed culture and ability to sustain a culture. Ethnic minority on the other hand is a minority with a different language than the majority, but it does not have its own culture, or the ability to sustain such . . . In Sweden therefore the Tornedal-Finnish minority, as well as the Lappish minority, are only ethnic minorities, because they cannot

9. Series B, No. 17, pp. 19, 21 and 22. The legal foundation of minorities is found in identical clauses in the Treaties of Versailles, Saint-Germain, Neuilly and Trianon.

10. Francesco Capotorti, *Study on the Rights of Persons Belonging to Ethnic, Religious and Linguistic Minorities* (United Nations, E/CN.4/ Sub. 2/384 /Rev 1), p. 6.

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develop or sustain a higher cultural life. There are no Finnish schools in Sweden or the possibilities to receive a university education in Finnish in Sweden"[11]

According to his definition, Finnish-Swedes (the Swedish minority in Finland) are a national minority while Tornedal-Finns (the Finnish minority in Sweden) are merely an ethnic minority. The former have the ability to develop and sustain a higher cultural life, while the latter do not. Suffice here to quote Artturi Similä's comment to Modeen's racial and chauvinist constructs, which reflect the official Swedish minority policy. "I wonder if the assertion that Tornedal-Finns are only a language minority is correct. In fact they inhabit a territory that in the past belonged to Finland and which, after a new border was drawn, happened to be on the wrong side of that border. In the past, they always had Finnish schools. If the majority take their schools, forbids them to have schools in their own language, are they then reduced from national to ethnic minorities?"[12] Summarizing the traditional Swedish viewpoint, Modeen concludes that the provisions in Article 2, Chapter 1 of the Instrument of Government (*Regeringsformen*) must be seen in light of the basic fact that "there are no national minorities in Sweden"(sic!).[13]

A comparison between the status of the Swedish minority in Finland and, the numerically larger, Finnish minority in Sweden, illustrates not only the Swedish minority policy but also the concept of Swedish *Grossraum*. In Finland Article 14 of the Constitution Act guaranties the use of the mother tongue, whether Finnish or Swedish. According to the Act of June 1, 1922 all civil servants in both local and central state authorities, must be competent in both languages, Swedish and Finnish. In addition, the General Language Act stipulates that Swedish is the only official language in Åland.

It is interesting to compare Åland, which is part of Finland but with a predominantly Swedish speaking population, with Tornedalen, which is part of Sweden, having a predominantly Finnish speaking population. According to a 1921 treaty still in force between Sweden and Finland June 27, 1921, and still in force, the only official language in Åland is Swedish. Article 2 of said treaty reads: "Local authorities in Åland cannot maintain or support any other schools but such in which the Swedish is the official language. In state institutions in Åland the language of education shall be exclusively Swedish. Use of the Finnish language is forbidden in all schools that receive state or communal support."[14] Thus even today there are no Finnish schools in Åland. In Tornedalen, on the other hand, the use of Finnish was forbidden, and Finnish children, using Finnish during the class breaks, were subject to punishment. That practice was prevalent until the mid-1960s. There are still no Finnish schools in Tornedalen. A 1978

11. *Lagstadgade Kulturella Minoritetsrättigheter i Sverige* (Stockholm: Rättsfonden, Natur och Kultur, 1978), pp. 18-19.
12. *Ibid.*, p. 21.
13. *Ibid.*, p. 35.
14. *Ibid.*, p. 29.

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study by the "Immigration Institute" in Borås, Sweden, showed that although minorities in Sweden constituted 12% of the population, there was not a single judge, prosecutor, lawyer or even a police officer with a minority background.

According to the UNESCO Convention against Discrimination in Education and the UN International Convention on the Elimination of All Forms of Racial Discrimination, the degree of recognition of minorities is in descending order from constitutional recognition of the existence of distinct groups and of the rights of their members to a special regime, particularly with regard to the development of their culture and the use of their language to non-recognition. The development in Sweden has been from total non-recognition of national minorities to partial implicit recognition not of national minorities but of certain ethnic and linguistic groups. Today there is still no concept of national minority in Sweden.

Geopolitics

Dahl seems to believe that Schmitt's definition of *Grossraum* "is a territory which has the power to secure its own borders against its enemies." Apart from the fact that territories do not have any power, only states ruling over territories do, the concept of *Grossraum* implies above all hegemony. Both the concept of *Grossraum* and *Lebensraum* were first coined in Sweden by Rudolf Kjellen in his 1916 book *The State as a Form of Life.*

For Kjellen, the state is free from all restraint. Concerned with Sweden's past as a great power, he urged that Sweden should develop an expansionist policy and demanded the inclusion of Finland in a Greater Scandinavian bloc under Sweden's domination.[15] He recognized, however, that Sweden had ceased to be a great power and the "declining space consciousness" of the Swedish people made it difficult to resume imperialistic policies. Thus Kjellen advocated that Sweden at least share the vision of German imperialism and, with German help, secure hegemony in her Nordic *Grossraum*, above all in Finland. The influence of his ideas "on Swedish foreign policy was great and proved an important factor in Sweden's policy in two world wars"[16]

According to Kjellen, the living state obtains in five realms: territory, people, economy, society and government. If the state's realm (the Swedish term is "*Rike*," equivalent to the German "*Reich*") is a body, then like any other biological organism the state must grow and have organs. Geopolitics was concerned with the expansion of the state by colonization and conquest. "Vitally strong states, possessing only limited space owe it to themselves to enlarge their space by colonization, amalgamation, or conquest." Germany was allegedly a vitally strong state destined by geography, historical energy and spatial consciousness to

15. Norman J. Padelford and George A. Lincoln, *The Dynamics of International Politics* (New York: The Macmillan Company, 1967), p. 106.

16. Robert Strausz-Hupe, *Geopolitics. The Struggle for Space and Power* (New York: G. P. Putnam's Sons, 1942), p. 42.

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expand. Thus, he identified Sweden with Greater Germany and claimed that only through German expansionism could Sweden grow and consolidate her own *Grossraum* in Scandinavia.[17] As originally defined by Kjellen, the "people's home" included two elements: geographical and the racial components. In other words, the people's home presupposed the people's racial homogeneity.

Corporatism

In his memoirs, Per Engdahl, the most prominent Swedish fascist, pointed out that the creation of the people's home has been the most successful realization of the political idea of corporatism. Huntford writes that: "Like fascist Italy, Sweden is today a corporate State. But the Swedish version of the corporate State is far more complete than the Italian one. Corporativism sat uneasily on the Italians and it only affected the country superficially; in Sweden, it has permeated all corners of national life. The difference is that, whereas in Italy corporativism was an alien contrivance imposed by the ruling clique, in Sweden it is the natural inheritance of everyman. No revolution of *coup d'état* was necessary; it grew up with modern Sweden and, to the present-day Swede, appears perfectly natural and desirable."[18]

Huntford goes on to claim that "The most obvious effect of the Saltsjöbaden agreement was the entrenchment of industrial peace, but the most profound consequence was the establishment of the corporate State . . . Saltsjöbaden was ostensibly an armistice between labor an capital; in reality, it was a concordat defining the powers and jurisdiction of the employers, the trade unions and the State. The written clauses committed the signatories to the maintenance of industrial peace: the unwritten ones laid down the principle that, in return from freedom from State intervention in the conduct of their affairs, both sides of industry would enforce the economic policy of the government. Through the Saltsjöbaden agreement, unions and employers had, in effect, coalesced into a single corporate structure in order to regulate the Labor Market. This was precisely what Mussolini had attempted to impose on Italy at about the same time." [19]

R. H. Weber comes to the same conclusion: "Swedes have perfected the essential elements of the economic strategies employed by the fascists in Italy

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17. In the wake of the dissolution of the Soviet Union some of the old Swedish *Grossraum* thinking and traditional view of minorities have been revived. Recently, the former Prime Minister of Sweden, Carl Bildt, entertained the notion of a Scandinavian-Baltic Co-Prosperity Sphere under Swedish leadership, viewing minorities in Baltic countries as "demographic occupation"(sic!) which first and foremost must learn how to be loyal to the majority. Not only does Bildt advocate various types of discriminatory legislation against minorities but also seems to suggest a final solution for the minority question in the Baltic countries. See Carl Bildt, "The Baltic Litmus Test," in *Foreign Affairs* (September/October 1994), pp. 72-85.

18. Huntford, *op. cit.*, pp. 86, 87.

19. *Ibid.*, pp. 92, 94 and 95.

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and the National Socialists in Germany to deal with the interwar crises"[20] If in 1934 Germany the faction of Otto and Gregor Strasser, Ernst Röhm and Goebells had prevailed, Germany may have developed as a much larger version of the Swedish people's home.

The Historical Tradition

In order to understand the nature of Swedish corporatism and of the people's home, it is necessary to understand the Swedish historical tradition. Corporative features predate Swedish Social-Democracy and their origin is to be found in the Swedish tradition of authoritarianism and state theologization. Sweden never became a *Reichstaat*. Rather, the Swedish tradition advocated the Cult of the State and state omnipotence. Wilhelm Moberg has written that: "For a long time Sweden has been the Promised Land of the civil servant. At least since the time of Karl XI, the bureaucracy has prospered in the country. No matter what authority Swedish civil servant may have, they want to show it and exact obedience. Most Swedes are loyal, obliging and reverently obedient — even if reason tells them that the prevailing order ought to be different. Even if the majority of Swedes no longer believe in the old preaching of the Swedish State Church that authorities have divine origins[21] . . . the vast majority of Swedes' obedience and fear of authorities seems to be metaphysically conditioned. Even if Swedes may believe that a law or an ordnance or a regulation are stupid, ridiculous or even totally absurd, they will still obediently submit to their fiat. Conditioned by historical tradition, the Swede can never oppose authority."[22]

It has been pointed out that factors such as early integration of the nobility into a central administration during the reign of Gustav Vasa, turned the tradition of nobility into that of civil service. Vasa, who introduced the Reformation in Sweden, saw clearly "the uses to which a national Church could be put . . . from the very beginning Gustav sought to control his subjects more effectively. Gustav's purpose in accepting the Reformation was to turn the clergy into civil servants. . . The Swedish church was identified with the State."[23] He nationalized the Church. During Gustavus Adolphus tenure, his highest civil servant, Chancellor Axel Oxenstierna, modernized the whole administrative system, perfected

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20. R. H. Weber, "Sweden Inc. The Total Institution. Order, Unity, Nationalism, Security: Fascism with a Human Face," in *Worldview* (March 1975), p.22.

21. The Swedish term for authorities is "*överhet*," literally something that is above the people, coming from above, or "ordained in Heaven." "*Överhetsstaten*," a term used to describe Sweden, is a state totally dominated by civil servants who constitute the *överhet*.

22. Wilhelm Moberg, *Att Övervaka Överheten* (Stockholm: Bonniers, 1957), p. 1. Moberg also defined the Swede as a subject, not a citizen, whose mentality and metaphysical reverence for authority have been described by Heinrich Mann in his book *The Subject*. The Swedish term for subject, "*undersåte*," connotes subservience, obedience and loyalty.

23. Huntford, *op. cit.*, p. 20.

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the centralization of the state and established the administrative system that has survived to the present. Centralization and bureaucracy were the constituting elements of the Swedish tradition.

According to Huntford, "the Swede has never emerged from the group. He is conscious of himself only through some general category, as a member of a people, a clan or a party. He has preserved untouched a devotion to an hierarchical order of things and an unprecedented devotion to corporate organization. Sweden has remained a country not of individual citizens, but of groups and gilds. The industrial revolution found a receptive environment in Sweden and did not have to grapple with the inappropriate mentality of Western Europe. Sweden is a country in which modern institutions have been grafted onto a medieval frame of mind. Swedes have the distinction of underdeveloped individuality. Escaping the discovery of the individual, the Sweden's continued to think and act in a group. They have preserved their medieval core intact."[24]

Over a thousand years of such conditioning have produced a collective mentality and a view of personal identity exclusively in terms of membership to a group. Individuality could not develop in this environment, and conformity remained the highest of virtues.[25] Out of all ideas that Sweden has been exposed to since the Enlightenment, it is the Prussian sense of service and loyalty that suits the Swedes best.

The Swedish Ideology

During the late 19th century Christopher Jacob Boström (1797-1866) became the philosopher of the Swedish Nomenclatura and and main advocate of Swedish statism and centralism. He believed that there are no conflicts in reality, which is static and not subject to historical change. Reality consists of sacred laws, which are eternally valid and completely independent of what is perceived as empirical reality. The latter consisted of a hierarchy of ideas, each deriving its legitimacy, in descending order, from the higher one. The highest idea was God, then the state, which derived its legitimacy from God, followed by the a civil servant who in turn derived legitimacy from God and state. Last in that hierarchy were the people. For Boström, the concept of popular sovereignty was blasphemy. Against the blasphemous notion of the people's sovereignty stands the absolute sovereignty of God. Boström was an adamant critic of liberal capitalism, which he saw as an ideology "conceiving the state as similar to a corporation. A corporation is something individuals can arbitrarily establish and likewise arbitrarily dissolve according to their egotistical interests."[26] To Boström, the state is a living organism, an idea having divine origins. The state is a

24. *Ibid.*, pp. 34-35.
25. *Ibid.*, p. 88.
26. Svante Nordin, *Den Boströmska Skolan Och den Svenska Idealismens Fall* (Lund, 1981), p. 29.

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moral personality superior to any other. Thus to question the state is immoral.[27]

Boström's philosophy became the ideology of the Swedish civil servant. That tradition was later further developed by the Uppsala school of jurisprudence. Axel Hägerström (1868-1939), its most prominent representative, succeeded Boström as the ideologist of the state and of the Nomenclatura.[28] For Hägeström, concepts of right and wrong are only superstition. Similarly, any discussion concerning the limitations of the power of the state is also superstition. Power is law. State power precedes the law and the law is only an expression of state power. No law, including the constitution, can limit the power of the state. Civil servants derive their power and legitimacy from the state, and in operational terms the state is identical with those people, who exercise power in such way that their will is recognized as the state's will. In this respect their will is the sole source of all legal norms, including the constitution. Thus, neither the constitution, nor any other subordinate laws, can limit the civil servants' will. They can never act in an unconstitutional way because when they act contrary to the constitution, the latter loses its normative value and the new declaration of will becomes a new legal norm. In other words, for Hägerström the civil servants were the sovereign who always decides on the exception. From the principle that state acts are always acts of sovereignty it followed not only that the sovereign is beyond the courts' jurisdiction, but also that the sovereign is always right.

In Swedish legal doctrine those assumptions constitute the basic principle of administrative law: "On the question of the administration which exercises authority, Swedish law has been built on the principle that the State does not have any responsibilities for the administration's mistakes.[29] The Swedish legal tradition downgraded the legislator as the central agent of the political process.

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27. According to Boström, the idea of the state preempts individuals who are only organs for the State. The law does not serve individuals — individuals must serve the law. Sovereignty originates not from the people but from the idea of the state, and ultimately from God." See Nordin, *op. cit.*, p. 27.The German historical school of jurisprudence also had influence in Sweden. It conceived the will of the state as an expression of the historically constituted *Volkgeist* and thus as a moral imperative for the individual, who did not possess a freedom of conscience, and whose human value was exclusively derived from his membership in the community.

28. The traditions of Boström and Hägerström "defined the ideology of the Swedish civil servant. Its tenets were that the state is God and the exercise of state power is always right." See Jacob Sundberg, *et. al.*, *Studier Kring Eurapa Konventionen* (Lund: Institutet för Offentlig och Internationell Rätt, 1981), p. 23.

29. This principle, unique in the European legal tradition, is made clear in the commenaries to Sweden's constitution: "As it is already known, Swedish law does not in principle, acknowledge that the state or local government has any obligation to make good damage caused by incorrect decisions by the authorities." Sundberg, *op. cit.*, p. 398. See also Robert Malmgren, Halvar Sundberg and Gustaf Petren, *Sveriges Grudlagar, op. cit.*, p. 230. Hägerström's tradition was further developed by the Social Democratic jurist Karl Lundstedt, and later, during the 1970s, by such leading Social Democratic jurists as Lennart Geijer and, above all, by the Minister Without Portfolio Karl Lidbom.

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According to Social Democratic state doctrine, the legal order of the People's Home is based on the identity of the rulers and the ruled, of those who govern and those who are governed, of those who make decisions and those who obey them. The people as well as the legislature must surrender to this unity. Legality is thus not the submission of state power to the will of the people through the mediation of parliament. The justification for the exercise of state power is derived from the legitimacy of the identity of the rulers and the ruled expressed and mediated by the will of the power holders. Thus the people's home is the identity of the rulers and the ruled, i.e., an administrative civil-service state, in which state authority is released from the restraints of the constitution and the material and political embodiment of that authority — the civil servant — are the true sovereign, legally unrestrained and, above all constitutional arrangements. The civil servant's will is legitimate by virtue of the fact that it is the will of the state. That led to devaluation of the legislative procedures and the legislator as well as to separation of the legal order from the Constitution, resulting in further institutionalization of the civil servants' will presumed to express the substance of the unity of the state and the people, and in whose name state power was wielded.

During the preparatory work on the new 1974 constitution, and the new parliamentary procedures, it was recommended that "in the future the government would steer legislation." The government acquired unlimited power over the legislation, at the expense of the legislator, leading to a situation in which the legislative power of parliament became wholly subordinated to the government's administrative power.[30] Per Gahrton called that development a crisis of Swedish parliamentarism characterized by subordination of the legislative body to the government and civil service, which had become the sole negotiators of all new legislation. Democratically speaking, Swedish Parliament is a front. It has lost its legislative function and has become an administrator of orders from the government and the higher bureaucracy. Its character of parliamentary legislative assembly is nowaday only an illusion. It has become a part of the state apparatus.[31]

Another consequence of the prevailing legal tradition in Sweden, particularly during the 1970s, was the non-normative, decisionist substance of the legislation and the accelerated use of so called "general clause" as a legislative conduit for the free decisionist reign of the civil servant. The "general clause" was the state's discretionary power, and became the domain of the administration's decisionist will. It contributed to the emancipation of the people's home

30. Commenting on that development, Gustaf Petren wrote that "Seen from a theoretical viewpoint the 1974 Constitution has erased the legal development from 1809 onwards, and has relapsed to a viewpoint that was predominant in Sweden from the Middle Ages to the end of the 1700s. Liberal legal concepts had no spokesmen among the founders of the 1974 Constitution, none in any case capable of making themselves heard against the advocates of the new statism." See *Svensk Juristtidning*, No. 1, 1975.

31. *Expressen* (December 27, 1979).

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from any non-political legitimation according to the principle that all political questions must be handled from a political, not a legal viewpoint.[32]

In *Über die drei Arten des rechtswissenschaflichen Denkens,* Carl Schmitt defined "decisionism" as thinking in terms of a decision without regard to any legal basis. In the clash between a legal norm and a political decision the political in the form of the decision must prevail. The people's home can also be considered what Ernst Fraenkel called a "prerogative state." The essence of such a state is its refusal to accept legal restraint, i.e., formal bonds. The prerogative state claims to represent material justice and can, therefore, dispense with formal justice.[33] Fraenkel compared temporal and ecclesiastical law on the one hand and normative and prerogative forms of domination on the other. In many respects, the prerogative forms of domination characterized by the civil servants' exercise of power in Sweden makes them a theocracy without a God.

The Swedish Immunity Law

When the rulers of the people's home constituted themselves as a "Theocracy without a God," as a sovereign who decides on the exceptions, they defined themselves as the source of all legal norms. Thus, when the Immunity Law was passed in 1974, it surprised no one. The law exempted higher civil servants, from a Head of Department and up (over 8,000 civil servants) from being prosecuted for any offense committed in conjunction with the performance of official duties. The law turned the higher civil servants into a privileged legal class. Only the Office of the Chief Public Prosecutor had jurisdiction over the Swedish Nomenclatura, but consistently failed to exercise it.

The passing of the Immunity Law led to several Parliamentary motions to abolish it, and an uproar in many countries, particularly West Germany and Italy, which shattered the image of the people's home.[34] A massive international campaign against the law resulted in the lodging of a formal complaint with the European Commission on Human Rights. During the weekend of November 23-25, 1979 the Italian and French Associations of Judges held a joint conference in Paris, where the main theme was the civil rights and freedoms of citizens in

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32. Commenting on the use of general clauses in the Swedish legislation Wolfgang Abendroth wrote that "General clauses are always excellent tools to pervert the law. General clauses that are not tied to a concrete, definable legal formulations, norms and description of acts always produce the same result, i.e., to increase the power of the upper bureaucracy, the government and holders of executive power that have control over the application of the law." See Wolfgang Abendroth and Reinhard Helmers, "Medborgarrätt," in *Arbetsnyheter*, No. 103.

33. Ernst Fraenkel, *The Dual State* (New York: Octagon Books, 1969), p. 46.

34. Werner Adam wrote in *Frankfurter Allgemeine Zeitung* (November 10, 1978) that "Sweden now is on its way from a former feudal centralist state, through the social welfare state, to an absolutist civil servant state." Warning about a bureaucratic dictatorship in Sweden. Francesco Alonzo wrote in *Corriere della Sera* that in 1926 Mussolini enacted precisely such an Immunity Law to protect criminal civil servants.

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Europe. The focus of the conference was the legal issues concerning the Immunity Law as well as *Berufsverbot* in Sweden. The Immunity Law was abolished in 1982 after Sweden realized that it was bound to lose the case then pending in the European Court of Human Rights.

Berufsverbot *In Sweden*

The Swedish equivalent to the West German "*Berufsverbot*" is the Personnel Security Control Act. It was enacted in 1969, three years before West Germany enacted the "Exclusionary Law Against Radicals" or "*Berufsverbot.*"[35] The Swedish Personnel Security Control Act comprises regulations for 43 different administrative bodies, including the Swedish Broadcasting Corporation. According to a former SÄPO (Swedish Secret Police) Superintendent Melker Bentler, those subjected to *Berufsverbot* in Sweden are "judged by a secret court."[36] This is why Herman Orth has written that "In Sweden, things happen like something out of Kafka."[37] How many people were listed during the late 1970s and early 1980s was classified information. However in the article in *Der Spiegel*, a SÄPO Department Head, Sture Höglund, stated that SÄPO carried out as many as 100,000 checks annually. While in West Germany the number of victims of *Berufsverbot* from 1972 to the end of 1979 was approximately 3.000, in Sweden, according to Denis Töllborg, more than 4,000 people were denied employment for political reasons every year.[38] In the late 1970s, the "Charta 79" movement became a catalyst for the growing political opposition to an increasingly repressive Swedish reality. Charta 79 was signed by 4,300 persons,

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35. Employment prohibition on political grounds existed before the enactment of the Personnel Security Control Act in 1969. Political registry of so-called "security risks" started shortly before WWII, in 1938, when the Swedish Security Police (SÄPO), modeled after the GESTAPO, was founded. As Sven Rydenfelt shows in *Säkerhetspolisens Hemliga Register* (Uddevala: Zindermans Förlag, 1966), written with Janerik Larsson, those registered as security risks were above all Swedish anti-nazis. After Sweden criminalized participation in the Spanish civil war as a volunteer on the anti-fascist Republican side, the returning volunteers were the first to be registered and subjected to persecution. During that period, SÄPO was entirely dominated by the GESTAPO and the SD (*Sicherheitsdients*) and one of SÄPO's leaders, Martin Lundquist, Stockholm Chief of Supervision, was assigned as a contact person with Reinhard Heydrich. By the end of WWII more that 300,000 Swedes were registered as security risks, among them Vilhelm Moberg, who, as a member of the "Tuesday Club," was marked as anti-nazi England sympathizer. As Moberg points out in the introduction to the book, in 1966 all those registered as security risks during WWII were still in SÄPO's registry, although the focus of the Security Policy was now on communists, left-socialist and anti-NATO activists.

36. *Dagens Nyheter* (Nov. 8, 1979).

37. *Der Spiegel*, No. 4 (1980).

38. Dennis Töllborg, *Svartlistning, Yrkesförbud I Sverige* (Stockholm: Federative Förlag, 1979). See also Dennis Töllborg, *Att Dömas Ohörd* (Lund: Acta Societatis Juridicae Lundensis, 1982); Henrik Ejbol Jensen, "Myndighetsmisbrug Skaber Berufsverbot I Sverige," in *Frit Danmark*, No. 9 (1977).

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belonging to the whole political spectrum of Swedish society.[39]

Prussian Socialism

It was Oskar Negt who first pointed out that German Social democracy is the heir of the Prussian State. Swedish Social Democracy found its identity in what can be called "state orientation," identifying and constituting itself as the party of the state, the party of order. Out of this state orientation, a totalitarian state — the true demythologized essence of the "people's home" — came into being, in which the authoritarian tradition, from the Middle Ages, by way of Protestantism and the Swedish State Church, has been developed and perfected and where the authorities, the ruling class of civil servants, had assumed the dignity of a religion.

The Social Democratic myth of the "people's home" was not invented by the Social Democrats. It originated in Bismarck's Prussian Socialism. Thomas Mann defined the "people's home" as a political idea.[40] As an antithesis to the alien concepts of political democracy and parliamentarism, he wrote that the true Prussian "people's home" was populated not by degenerate citizens, but by conservative burghers who were inseparable from the state. Unlike citizens, the true nature of burghers is non-political. It is this Prussian tradition of "socialism" which coincided with the Swedish political tradition and became the essence of the "modernization project" known as the "people's home."

Dahl claims that the causes for the collapse of the Swedish model were economic and had to do with changes in the global world economy and the slowing down of the growth of the Swedish economy. Yet, the legitimacy crisis of the people's home, which started in the 1970s, was also a contributing factor. A report concerning the economic concentration of capital during the early 1970s established that monopoly capitalism was steadily expanding in the Social Democratic "society without conflicts." A report on low income groups showed a picture of a widening social gaps. Suddenly there appeared political, economic and cultural poverty in the people's home. Much of the Social Democrats' political repression was aimed at the Left, not the Right. In an interview in *Der Spiegel*, Golo Mann, son of Thomas Mann, invented the term *Schwedisierung*, literally "Swedicization," as a description of rapidly worsening social conditions. Huntford, in the new introduction to *The New Totalitarians*, has pointed out that "The corporatism which lies at the heart of the Swedish system, continues on its way . . . The main difference is that the corporatism of the Left has been replaced by one of the center."[41] Later, the corporatism of the center was replaced by corporativism on the Right.

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39. The first articles about the Charta 79 in the international press were published in *Le Monde* (September 12, 1979), *Frankfurter Allgemeine Zeitung* (November 9, 1979), *Frankfurter Rundshau* (November 22, 1979), *Die Neue* (November 23, 1979), *Il Sole-24 Ore* (November 10, 1979), *Ny Tid* (November 15, 1979).

40. Thomas Mann, *Reflection of a Nonpolitical Man* (New York: Frederick Ungar Publishing Co., 1983).

41. Huntford, *op. cit.*, p. vii.

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Luke on "Green Hustlers"

Andrew McLaughlin

Tim Luke's review of my book, *Regarding Nature: Industrialism and Deep Ecology* (*Telos* 97), so misstates what I wrote that I want to enter a dissent. In the world according to Luke, there are lots of "green hustlers" pretending to make the world better while actually seeking political power for themselves. Not being clear about what the "environment actually is," these "eco-opportunists" hustle "nature in search of power."

Although I doubt that Luke's category of "green hustlers" particularly illuminates contemporary writings about the environment and nature, it is crystal clear to me that Luke has to ignore most of what I wrote to force and distort my book into his category. Briefly, Luke fails to mention my discussions of: the concept of nature (Chapter One); the impossibility of capitalism becoming ecologically rational (Chapter Two); the impossibility of socialism becoming ecologically rational (Chapter Three); the reasons why industrialism is the needed category for understanding modern society's ecological crisis; why industrialism's project of dominating nature cannot possibly be achieved; why control is an illusion; the way science's image of nature as lifeless matter reinforces industrialism's approach to nature as resource and how an ecologically informed image of nature is better; why any environmentalism which ignores social analysis is inadequate; what is wrong with anthropocentrism; what is valuable in deep ecology; and how discussion among the various threads of radical ecocentrism, including bioregionalism, must aim toward building some unity among those who would dare to move beyond industrialism.

The fact that a reviewer does not discuss everything in a book is neither surprising nor ethically suspect. There are space limitations. What is ethically suspect is when the aspects of the book which the reviewer omits to mention directly contradict the theses the reviewer imputes to the author. This is intellectually dishonest.

Luke claims I ignore "the struggle for wealth and power" and "begin" my ecological critique "with a discussion of the struggle for 'personal identity'."(143) This is, by any reading, simply false. I assume that Luke's edition of the book is not lacking the first three chapters, which contain a critique of capitalism, "really existed" socialism, a critique of *any* bureaucratically managed centralized socialism, and arguments why the central social problematic is mass society. This is the context for my suggestion that industrialism should be the central social category of analysis in understanding the causes of the ecological crisis. It is only after this discussion that I try to discern the roots of consumerism, which is one — but only

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one — of the driving forces of industrialism. I argue that socialism's Achilles' heel is that it must pursue an industrial pattern of production in order to buy off its citizens. Now Luke may disagree with this analysis but it is unfair for him to claim that I ignore the "struggle for wealth and power," and portray me as beginning by discussing "personal identity." Luke had to omit any mention of these chapters so he could force my work onto his procrustean bed of "green hustlers."

Luke has to misread me in this fashion in order to continue to discredit deep ecology, which is, I assume, his hidden agenda. Had he paid attention to the chapters of social analysis which preceded my discussion of deep ecology, and the sections which followed, he would have had to acknowledge the causal importance I attribute to social and economic formations. Then he would have had to recognize that I was seeking the grounds for alliances among various social movements trying to radically transform industrialism.

Most astounding is to read that, according to Luke, I am advocating the conservation of state power against local movements, astounding because it not only contradicts what I say but belies the whole logic of the book. The reader of the review could not know that, because Luke does not discuss it. He has to omit it to make me conform to his hustling thesis.

To set the record straight, I argue at some length that a centralized industrialized state cannot possibly manage social relations with the rest of nature adequately. Indeed, one chapter deals with the conceptual impossibility of the project of the control of nature, as long as one believes that humans are part of nature. Yet the project of industrialism presumes an escalating attempt to control the rest of nature. If the project of control is fundamentally misguided, then increasing state power seems exactly the wrong direction.

Thus when Luke claims that I am somehow "a smokescreen for New Class empowerment and communal disempowerment" (154), I can only guess that he did not finish the book, or he is again being dishonest. He neglects to inform his readers of my support for bioregionalism (205-210). I argue that bioregionalism offers the best theoretical frame within which to imagine societies which could learn to live harmoniously with the rest of nature. I also point out that some such decentralization is necessary to get any meaningful political democracy, which seems impossible within industrial societies because of their scale. Bioregionalism would require economic as well as political decentralization. These are both trends I support in my book. Decentralizing our political and economic life would allow more loving relations between inhabitants and their places. One can only love what one knows. Further, as Mumford argued in *The Myth of the Machine,* such a decentralization would enable the continuation of human cultural evolution which is now, and has long been, threatened by industrialism. Not only does this not add up to an agenda for local disempowerment, it urges us in exactly the opposite direction. Luke may disagree, but at least he should honestly state his opponents' claims, not impute to them the exact opposite of what they assert.

I could go on and respond to the gratuitous *ad hominems* dropped by Luke,

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but that would serve no purpose. What is important is that those who would oppose the dominant trend toward global industrialism, and there are not enough of us yet, need to enter into productive dialogue to forge what commonalities we can. At least some of us believe that the ecological problems we face are deep, serious, and urgent. But these problems can only be resolved if enough people with a variety of concerns can come together to change what is, after all, a slowly toppling behemoth.

Regarding Nature, Anti-Industrialism and Deep Ecology: A Response to McLaughlin

Tim Luke

In my review of three books dealing with recent environmental criticism, I argue a fairly noncontroversial point, i.e., people write books so that their political positions will be granted greater acceptance or accorded additional authority in order to improve public life, end some crisis, or advance a moral good. The adoption of environmental rhetorics to pursue power-generating or power-seeking outcomes is now in vogue, and various figures, such as Andrew McLaughlin, Al Gore and David Oates, seem to be hustling for more recognition, influence, and followers in their environmental analyses by trekking across various expanses of ecology's green turf.[1]

Therefore, the image of green hustlers is not an entirely useless category of analysis. Unless McLaughlin is completely disingenuous, his *Regarding Nature* outlines a complex philosophical brief, arguing against the apparent evils of "industrialism" in favor of the alleged virtues of "deep ecology" as it might be realized through the political practices and structures of what he identifies as an ecocentric bioregionalism.[2] In my short discussion, I do not say he is "advocating the conservation of state power against local movements," although he does say that contemporary capitalism might be able to coexist with more decentralized bioregional organizations, and socialism might become more competent if it was

1. Tim Luke, "Green Hustlers: A Critique of Eco-Opportunism," in *Telos* 97 (Fall 1993), pp. 141-154.

2. Andrew McLaughlin, *Regarding Nature: Industrialism and Deep Ecology* (Albany: State University of New York Press, 1993), pp. 205-210.

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ecologically sustainable.[3] I do say that some intellectuals, like McLaughlin, Gore and Oates, are using ecological rhetorics to advance agendas of empowerment for radical alternatives that are highly problematic, making their respective visions of defending nature into moral crusades to install bioregionalism, strategic environmental initiatives, and sustainability codes at the center of political power.

Books that simplistically tout alternative notions, such as bioregionalism, ecocentrism, and sustainability in the guise of vague buzzwords rather than sharp policy programs, can play into the hands of administrative empowerment and communal disempowerment.[4] Of course, ineffectual and divided groups, like the disorganized cells of the American Green Party or a panoply of North American bioregionalist fronts, talk about these ideas in warm fuzzy terms at great length. Yet they have had little or no demonstrable political impact on American life thus far.[5] McLaughlin might regard these marginal factions as a genuine popular movement destined for greatness. However, these forces continue to be insignificant fringe elements incapable of organizing the few score of true believers in their own ranks as a coherent political agency, much less providing the organizational basis to reorder ecologically present-day industrialist civilization.[6] Similarly, New Class intellectuals in many non-governmental organizations, environmentalist pressure groups, and international aid agencies, as Gore's book indicates, are eagerly appropriating the rhetorics of bioregionalism, ecocentricity, and sustainability into their bureaucratic practices, using them to rerationalize hyperindustrialist modes of agriculture, industry and commerce in ways that can enhance the established workings of transnational capitalism and national state power.

Despite his objections, McLaughlin does not effectively re-examine the fundamental ideologies that "we moderns" allegedly are entrapped in — anthropocentrism, capitalism, industrialism, scientism, socialism. At best, he writes a shadow play, cast with characters bearing the most generic and simplistic attributes of capitalism and socialism (based on an impoverished Cold War reading of both systems). In this theoretical theater, capitalism is Fordist corporate consumerism and socialism is Gosplannish bureaucratic collectivism. Scientism and industrialism are unstable assemblies of instrumental reason, reductionistic operationalism, materialistic ontology, and methodological falsificationism. Ultimately, of course, "science and its reductive image of nature are *constructed* in the interest of control."[7] By using this sort of instrumentally rational science as its base motive force, industrialism for McLaughlin becomes a sociological

3. *Ibid.*, pp. 44 and 62.

4. For more discussion of this tendency, see Paul Piccone, "The Crisis of One-Dimensionality," in *Telos* 35 (Spring 1978), pp. 43-54, and, Tim Luke, "Culture and Politics in the Age of Artificial Negativity," in *Telos* 35 (Spring 1978), pp. 55-72.

5. See Robert Paelke, *Environmentalism and the Future of Progressive Politics* (New Haven: Yale University Press, 1989).

6. See Anna Bramwell, *The Fading of the Greens: The Decline of Environmental Politics in the West* (New Haven: Yale University Press, 1994).

7. McLaughlin, *op. cit.*, p. 116.

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summation of a predatory mode of production, resting on bureaucratically planned consumption, administratively managed production, and scientifically generated technology as it reposes with both capitalist and socialist economies.[8]

In capitalism and socialism, McLaughlin contends, "industrialism regards all of nature, human and non-human, as a reservoir of resources to be used in the production of a variety of goods. As a project, industrialism assumes that nature can be controlled, and its need for control expands along with the swelling of industrialism."[9] Perhaps it is merely a question of his ecosophical attitudes, but this definition of industrialism sounds like a conflation of all "technology" with contemporary "industry." If this is true, then are not most human actions — since the first members of *Hominidae* picked up stones from the reservoir of resources afforded by rock beds to produce a variety of tools to work a variety of vegetable, mineral and animal matter into goods — examples of "industrialism?" In throwing a rock (mineral nature) against a tree stump (vegetable nature) to extract grubs (animal nature) to put in their bellies (human nature), did not Mr. and Mrs. *Australopithecus* regard nature — human and non-human — as a storehouse of resources, assume they could control nature, and expand their industrial facilities? Maybe it was an appropriate technology sustainably developed in their immediate bioregion, but such actions appear "industrialistic" in McLaughlin's terms.

With regard to resisting anthropocentrism, McLaughlin simply hides its workings inside his new ecocentrism. This maneuver is not clever, but it is the only honest option, since one must wonder how human beings could ever move beyond anthropocentrism? As long as humans are humans, they will be, and can only be, anthropocentric. The notion of ecocentrism tacitly acknowledges this inevitability, even though McLaughlin does not face this inexorable necessity. Ecocentrism simply asserts that humans are nature, they must coexist with all other life forms in the diversity of nature, and non-human life should be accepted as equally important as human beings. While it is not clear that ecocentrism really would be a radical break with most current practices, this rhetorical move does broaden the notion of humanity to include non-human nature as a vital aspect of identity for human beings. So becoming radically ecocentric may only mean becoming softly anthropocentric (instead of acting strictly human-centered), because humans now correctly merge with nature. Since the humanly defined ecology underpinning ecocentrism is now also the center of human being, recentering social ontologies and axiologies on this humanly delimited ecology simply slips the anthropos into a stealth mode by embedding human beings more forthrightly into nature.[10]

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8. *Ibid.*, pp. 63-82.
9. *Ibid.*, p. 83.
10. See Tim Luke, "The Dreams of Deep Ecology," in *Telos* 76 (Summer 1988), pp. 65-92.

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McLaughlin contends I misrepresent and distort his arguments, but I believe my review simply reported the most coherent aspects of his analysis. I do not rehash the book in the way he rehearses its alleged insights above, because I wanted to avoid discussing what reads as a fairly confused narrative about society, science and nature. The first three chapters of the book are not about "the struggle for wealth and power." Instead, Chapter 1 is an extended theoretical excursus through the concept of nature. For the most part, it merely repeats all of deep ecology's dubious misreadings of industrialism, capitalism, scientism, and anthropocentrism, leaving those who agree with deep ecology in the right boat sailing off into the sunrise of ecocentric bioregionalist salvation, while those who disagree are left on the benighted bank of industrialist, capitalist, scientistic, and anthropocentric error.

Chapter 2 on capitalism and its brutal destruction of nature claims "the essence of capitalism's ideology of nature is that pieces of non-human nature can be privately owned."[11] Maybe; maybe not. Since this statement implies that private ownership is the *sine qua non* of capitalism, what are the modes of production sustaining an ancient Mesopotamian potentate's apparent title to water, fields and peasants, or a Mayan lord's command over trade and agriculture, or a Masai tribesman's claim to herds of cattle? Anthropological studies document how many such pre-capitalist and pre-industrial systems were as abusive or even more destructive of nature than the modern capitalism decried by McLaughlin.[12] One begins to wonder about the accuracy of McLaughlin's critique of capitalism and its many ecological flaws. At best, this chapter reworks bits and pieces of C. B. MacPherson's theory of possessive industrialism. It begins with the claim that "John Locke provided a rationale for the private ownership of the earth," and concludes with the declaration that "markets are not an ecologically adequate model of interacting with rest of nature," inasmuch as they stress personal calculation, rational pricing, and economic growth.[13] Maybe; maybe not. Very little here, however, convincingly supports most of the claims about private property and ecocide McLaughlin makes in this anti-capitalist vein of analysis.

Chapter 3 discusses, as if it were news, that the USSR and other state socialist nations were not, in fact, socialist, democratic or ecological. McLaughlin then assumes that just about any socialist system would be statist, like the USSR,

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11. McLaughlin, *op. cit.*, p. 23.

12. Even Christopher Manes, in his deep ecology polemic, *Green Rage: Radical Environmentalism and the Unmaking of Civilization* (Boston: Little, Brown, 1990), concedes this point, i.e., that "industrialism" *per se* is *not* "the problem." Manes argues that "the names of history's grandest empires in fact compose a list of ecological disasters: Sumeria, Egypt, Greece, Rome, India, Aztec Mexico — all deforested, desiccated, eroded. From the perspective of biocentrism, therefore, the problem goes deeper than the monolithic and destructive technologies of industrialism," p. 228.

13. McLaughlin, *op. cit.*, pp. 25 and 31. For a more detailed analysis of this point, see C. B. MacPherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (London: Oxford University Press, 1962).

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because a socialist state would have to deploy Soviet or, at best, Swedish style bureaucratic planning to run its industrial economy and ecology. Even so, it would always fail. Why? Because few bureaucracies can plan effectively, and environments cannot be planned. "Not only do we not now know enough to manage the environment," McLaughlin proclaims, "but perhaps we never will."[14] This is a disturbing claim, not because it is necessarily true, but because if we do not have this sort of knowledge, then how does McLaughlin "know enough" to recommend ecocentric bioregionalism to us with any confidence as a knowledge system that somehow will permit society to run rightly the earth?

These three chapters are full of second-hand recapitulations of third-rate environmental philosophies posing as analyses of "the struggle for wealth and power." McLaughlin, however, does not effectively face concrete issues of fighting for wealth and power. At best, he scribbles a morality play for a cast of straw men, whose industrial foibles will be corrected by the *deus ex machina* of ecocentric bioregionalism. In the first act, the fictive science and oppressive technology of industrialism reduces nature to resources, but in the second act this conflict can be corrected by mobilizing the right values drawn from ecologically informed images of nature.[15] Moreover, this morality play's lessons are well in line with standard American operating procedures: concoct a techno-fix. Fortunately, McLaughlin concludes, the conceptual catalytic converter of ecology, if plugged into the industrialist engines of science by ecocentric deep ecology, will clean the filthy combustion of commerce of all its noxious anthropocentric, capitalist, socialist, and scientistic pollutants, causing the rightly rebuilt vehicles of bioregionalism to run cleanly and freely. Maybe; maybe not.

Trapped in outmoded, inaccurate or just plain wrong notions of "industrialism," which cannot even grasp the possibility of humanity's technological coevolution with nature in anthropogenic environments,[16] McLaughlin wanders around the environmental ills of contemporary society in an extremely unconvincing ecological critique. He assumes everyone and everything in Western industrial civilization approaches nature as though humans lived separate from it rather than within it. Human beings, for McLaughlin, are not of nature: they stand over and against it. This is nothing new. At best, it is the old face-off of pastoralism and progressivism — the machine in the garden — that has dogged American political thought since the Civil War.[17] Nature is outside, humanity inside. In turn, the artificial inside of "society" always works to conquer, dominate, and imperialize the natural outside of the "environment" by reducing it to

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14. McLaughlin, *op. cit.*, p. 61.
15. *Ibid.*, pp. 99-141.
16. For a discussion of this possibility, see James Lovelock, *A New Look at Life on Earth* (New York: Oxford University Press, 1979).
17. See Leo Marx, *The Machine in the Garden* (New York: Oxford University Press, 1964).

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resources. So "nonhuman nature appears to be infinitely malleable and worthy of any transformation which promises greater 'ease and comfort.' This attitude gives rise to the idea that there is no limit to the collective ability of humans to impose their will on the rest of nature."[18] Humanity, in turn, becomes the sole occupant of artificial spaces or non-natural habitats, i.e., cities or other essentially urbanized spaces in towns, suburbs or tiny villages where people are industrially "liberated" from nature.

The realm of "nature," on the one hand, is the green hills where small cabins are heated by wood stoves, and the seasons are marked by complex changes in plants and animals. Unfortunately, this arcadian zone is also chock-a-block with the stuff of non-human nature that these unnatural humans regard as raw resources for their industrialist engines of economic growth.[19] Modern "society," on the other hand, is cities where one lives in small apartments dependent on oil, electricity, subways, clocks, televisions, supermarkets, and flush toilets. Society is separate from but dependent on nature to survive by means of industrialism. The latter is conquered, dominated and exploited by the former, causing all of our environmental crises.[20] Some of this is true, but maybe not in the ways McLaughlin thinks.

This peculiar consciousness of nature and society may well embody the social existence of an associate professor of philosophy working in New York City, who confirms his readings of industrialism and nature by referring to other like-minded philosophers given to seeing the green hills and the naked city in similar terms. But is it correct? Do nature and society exist in these discrete divisions? The stuff of what is regarded as "nature" and "society" already may be mutually embedded, wholly interpenetrated, and coincidentally codetermined.[21] The little cabin and big apartment building, the green woods and concrete streets, pristine nature and corrupt society may occupy shared coevolutionary spaces in the same modes of human production. *Homo sapiens* might be that animal species whose habitat *is* the city. What society is doing to the earth might be *natural* to and for humanity. What is decried as industrialism could be, in fact, the natural human food chain operating in the artificial ways that this highly efficient

18. McLaughlin, *op. cit.*, p. 71.

19. This reading, of course, simply rehearses Heidegger's dubious universalization of contemporary instrumental reason. See Martin Heidegger, "The Question Concerning Technology," in *Basic Writings,* David Farrell Krell, ed. (New York: Harper & Row, 1977), pp. 283-317. For a discussion of this ecological Heidegger, see Bruce V. Foltz, "On Heidegger and the Interpretation of Environmental Crisis," in *Environmental Ethics* VI (Winter 1984), pp. 323-338.

20. Manes completes this picture, blaming it all on "civilization" in order to urge us to "unmake civilization," in *Green Rage, op. cit.*, pp. 225-248. The "cultural world" must be rejected in favor of the "natural world," p. 248.

21. For one suggestive view of this possibility, see Donna Haraway, *Simians, Cyborgs, and Women: The Reinvention of Nature* (New York: Routledge, 1991).

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predator species succeeds as a hunting, gathering, cultivating, herding animal. If man is an animal, and cities are being built in/on/of this planet, then why are not society, humanity, and industrialism "natural"?

Are human beings extraterrestrial, is what people do the work of space aliens? Or, is McLaughlin merely drawing some indefensible distinctions that only substantiate his deep ecological biases, favoring a type of society that lives in small cabins in the hills, burning wood and using pit toilets, content that this lifestyle is deeply ecosophical? Even this move has dangers. After all, given his own conceptual construction of industrialism, are not bioregionalists living in the woods "industrialistic?" Rustic cabins, outdoor plumbing, and woodstoves constitute human assumptions that nature can be controlled by fabricating shelter systems, latrine technologies, and heating mechanisms to evade the weather, eliminate body waste, and warm homes. All these acts take something from nature as a "resource reservoir" to produce each of these specific goods. Scale, numbers and intensity surely modify the outcomes of this equation. But is it merely a shift in magnitude, rather than a qualitative change? These technologies — like all technologies — for bioregional society — like all societies — simply would reshape this "ecocentric" human habitat out of coevolving ensembles of nature and humanity, environment and society, industrialism and ecology.

McLaughlin, however, seems to prefer looking at nature through the visual rhetorics of hyperreal Sierra Club calendar art, where the trees are always resplendent in autumnal colors, the sky is crystalline clear, the soils are richly productive, and the flowers bursting in full bloom. It looks great, so it must be "natural." The reality underlying the image might be that drought stress colors the leaves, ozone saturates the air, heavy metals lace the soil, and misapplied chemicals juice up plant growth inasmuch as this industrial image of "nature" is, in fact, technologically denatured by its inescapable embeddedness in an industrial "society." One is not outside and the other inside. They are continuous overlapping spaces and events. For McLaughlin to divide them conceptually in order to invent characters of purity and corruption for an environmental morality play about the depredations of industrialism is amusing, but virtually useless as a political critique.

McLaughlin's analysis of industrialism, then, is naive. Without what he defines as "industrialism," humanity cannot exist at any level of sophisticated material civilization. In fact, as many anthropologists have recognized for decades, these industrialist propensities are what has made humanity what it "is." Humans arguably are tool users, tool using is instrumental, and humanity always has been made and remade by its instrumental tool-using.[22] Why should negative qualities be attributed to industrialism as such, when they may only be accidental

22. For this sort of social anthropological spin, see V. G. Childe, *Man Makes Himself* (New York: Mentor Books, 1951); L. A. White, *The Science of Culture* (New York: Grove Press, 1949); or, R. Linton, *The Tree of Culture* (New York: Knopf, 1955).

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or contingent characteristics of industrial activity, rising from unchecked greed or plain laziness, engineering tradition or corporate bureaucracy, concentrated ownership or statist domination, bad management or inefficient design.[23] Industrialism can work without the waste, inefficiency, despoliation and alienation McLaughlin rightly condemns, if it is rightly designed and operated to avoid these failings.[24] There is little intrinsic to all industrial technologies that is necessarily destructive beyond the inherent destructiveness of many "natural" processes. Indeed, McLaughlin's appeal to a successful utopian bioregional economy, which would have some sort of industrial economy to meet its human constituents' material needs, implicitly acknowledges this reality.[25]

Few writers recognize themselves or their writings as critical readers describe them in book reviews. So too do few reviewers recognize their remarks in those shocked retorts from the writers they have reviewed. Had my review warmly toasted this book with *ad hominem* praise or neglected many passages to wildly celebrate the brilliance of some others, McLaughlin would not have responded to those possible discursive outrages in the same ways he carries on here about alleged omissions, misrepresentations, and distortions. What he sees as essential, I read as banal. What he feels is ignored, I read as reworking already overworked arguments. To conclude, my review hardly is ethically suspect. On the contrary, it suspects McLaughlin's deep ecology ethics to be hopelessly muddled. The aspects of the book unmentioned by the review, in fact, do not merit mention. They lack the coherence of those passages where McLaughlin ties environmental action to consumerism and industrialism, which were mentioned. No theses are imputed to the author that the author does not raise, either explicitly or implicitly in light of this response, in his confusing critique of industrial society. This dog called "industrialism" simply does not hunt, and all of McLaughlin's pleas for us to recognize how indispensable and clever this critter could be in our search for effective modes of ecological resistance sadly are just plain wrong.

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23. Lewis Mumford basically makes this same point, see *The Myth of the Machine: The Pentagon of Power* (New York: Harcourt, Brace Jovanovich, 1970).

24. For a slightly subversive re-reading of industrial technologies to find an alternative "process aesthetics" in technological and industrial action that might not be so destructive or deadening, see Robert J. Thomas, *What Machines Can't Do: Politics and Technology in the Industrial Enterprise* (Berkeley: University of California Press, 1994).

25. McLaughlin, *op. cit.*, pp. 205-225.

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Reviews:

The Antinomies of Miglio's Neo-Federalism

Gianfranco Miglio, *Io, Bossi e la Lega. Diario Segreto dei Miei Quattro Anni sul Carroccio* (Milan: Mondadori, 1994), 98 pp.

Jurists and constitutional thinkers do not generally receive much recognition beyond the particular circles of experts dealing with such arcane legal matters. Even exceptionally competent scholars tend to remain practically unknown beyond the national boundaries of their own country. Because of his political involvement in the Northern League, however, Gianfranco Miglio has managed to acquire an unusual amount of justly deserved notoriety as the theoretician of Italian federalism — a project which in a few short years, thanks primarily to his efforts, has blossomed out of sterile academic speculations to the center of national Italian political debates. In large part this has also been due to his sharp critique of the bloated and corrupt Italian state and to his perceptive analysis of the broader geopolitical developments of the last decade.

Miglio's recent break with the League, bitterly documented in this lively booklet tantalizingly marketed as "a secret diary," thus signals neither a decline in the importance of his ideas nor the end of the federalist project of reconstruction of the Italian state. On the contrary, it may turn out to be a blessing in disguise, at least to the extent that it will finally allow the kind of serious analysis and criticism Miglio's federalist proposal needs but has so far failed to receive. It may also contribute to the end of the opportunistic and internally contradictory alliance of the federalist League with the post-fascist, nationalist Alleanza Nazionale within the Berlusconi government and pave the way for a long overdue reconfiguration of Italian politics away from the traditional paradigm of a statist Left contraposed to an authoritarian Right in favor of new divisions such as federalism vs. nationalism, localism vs. centralism, populism vs. liberalism.

What has happened during the last four years is that Miglio's project for the federalization of Italy has become embroiled in the particular politics of the Northern League and inextricably tied to its vicissitudes. This unusual unity of theory and practice, the dream of practically all intellectuals (Marxist or otherwise), has exacted a heavy price. In the 1980s Miglio was almost the only Italian intellectual to correctly envision the possible role of a radical regionalist movement in challenging the terminally corrupt central state apparatus[1] and precipitating essential institutional reforms within the context of a unified Europe. He

1. See Gianfranco Miglio, "Towards a Federal Italy," in *Telos* 90 (Winter 1991-92), pp. 19-42.

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systematically developed these views long before such a stance became fashionable after one of the main implications of the end of the Cold War became obvious to all: there were no more overriding geopolitical needs to keep Italy at all costs within a "free world" no longer totalized by any global communist threat. Since the end of WWII the main objective of US foreign policy towards Italy had been to prevent a communist take-over by whatever legal and extra-legal means necessary — to the point of supporting all sorts of extra-legal measures, such as official acquiescence of secret subversive organizations such as P2, clandestine para-military projects such as "Glaudio," and most of all, a widespread, systemic corruption throughout government, penetrating and degrading all aspects of Italian everyday life. Given his frustrations with several fruitless decades of personal efforts to rewrite the Italian Constitution — a project supported by practically every political party but, as usual, stalled *ad infinitum* by particularistic interests thriving within the corrupt *status quo* — Miglio's decision to join the League was neither impulsive nor otherwise irrational (although clearly a gamble, since at that time few had any clear ideas about the connection between the Cold War, international stability and national politics).

This sudden politicization, however, led to a curious polarization of public opinion, which has tended to prevent serious discussion and evaluation of Miglio's federalist project. Simultaneously misunderstood outside and dogmatically accepted inside the League, Miglio's theories were not subjected to any critical scrutiny by his political allies. They were simply instrumentalized to legitimate what had been hitherto a vague political program predicated not only on the lofty ideals of local autonomy and fiscal accountability but also on lingering poujadist resentment and occasionally xenophobic sentiment. Because of this same identification with the League program, his ideas were also summarily dismissed by most academic Italian intellectuals whose careers and livelihood were increasingly tied to the traditional parties' carefully negotiated parcellization of academic appointments and allocation of all other resources within the burgeoning educational budget. As a result, idolized but misunderstood by his followers or ignored and dismissed by his opponents, Miglio's ideas have not benefited from the kind of systematic criticism which may have let to considerably more theoretical sophistication and, eventually, intellectual legitimation. Now that he has broken with the League, this predicament may finally change, especially after the League's spectacular electoral success has at least succeeded in placing the issue of federalism high on the national political agenda.

Miglio's departure from the League was not altogether amicable. It may have had something to do, as Miglio's critics claim, with Umberto Bossi's doubts about his leading theoretician's loyalty and *Parteilichheit* — and therefore his failure to insist within the Berlusconi government on having Miglio put in charge of the ministry of institutional reforms (a job for which, as Italy's leading constitutional expert, he was obviously the best possible candidate, but

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which instead went to Francesco Speroni, an otherwise ordinary *apparatchik* whose main qualification was his unwavering loyalty to Bossi). Or, as Miglio himself indicates, it may have had to do with a growing incompatibility with the League's increasingly questionable *Realpolitik* — or maybe both. Whatever the reason, it is only natural for *Io, Bossi e la Lega*, a booklet published in a pretentious series called "Bestsellers saggi," to be filled with a good dose of sour grapes, recriminations, innuendos, etc. (although, taking everything under consideration, it is not particularly vitriolic, given the super-heated political context within which it was written). What makes this *soi-disant* "bestseller" particularly relevant is an essay entitled "The Vocation and the Destiny of the Lombards," which originally appeared in 1989 in an obscure publication no one apparently read at the time. It is reprinted here as an appendix to document the kind of forebodings Miglio had from the very beginning concerning the League and the prospects for Lombardy's autonomy. In this essay Miglio not only predicted most of the problems the League has since run into but, most importantly, exhibits both the strengths and weaknesses of his own theoretical approach.

Most striking is the extent to which Miglio characterizes the Lombards, not as an ethnic formation, which they definitely are not, but as a paradigmatically *bourgeois* people destined to break with the rest of an Italy described as "Mediterranean" (and therefore essentially pre-modern), in order to join the rest of a *bourgeois*, Calvinist and modern Central Europe to which Lombardy "naturally" belongs both geographically and culturally. Here his positivist formation takes its toll. An author whose selected writings were appropriately titled by his students *Le Regolarità della Politica*, seeking to wrap an intellectual trajectory spanning almost half a century in a positivist aura of scientific objectivity, Miglio configures the rationality crisis engulfing the Italian state in terms of a forced but unsuccessful blending of a dynamic Northern Italian culture and lingering premodern residues (Southern Italian or "mediterranean" culture). The main contradiction — allegedly a tragedy for the hard-working Northern Italians — is that the cosmopolitan, bourgeois Lombards are business people with no patience for politics, a peculiarly Southern Italian proclivity. This has led to the current pathological political predicament of a productive North being held back and prevented from achieving its full socio-economic potentials under the political hegemony of a backward South. According to Miglio, crafty Southerners have always succeed in dominating their hard-working Northern compatriots terminally embroiled in the cash-nexus and therefore too impatient to meddle with political chicanery. Thus the kind of federalism he advocates (which goes back to proposals by Northern Italian intellectuals such as Carlo Cattaneo at the time of Italian unification in the 1860s) has no real chance of coming about, except in the context of a broader process of European unification.

Miglio's federalist proposals are ultimately an attempt to resolve what he sees as Italy's historical political stalemate between a "pre-modern" South and a

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"modern" North by federalizing the country and reintegrating its various regional fragments within a broader European framework under the inevitable domination of the Germanic species (*stirpi*). His misadventures with the League is therefore presented in this booklet as nothing but another expression of the Lombards' incompetence as political leaders — a situation which may be eventually remedied once European unification takes place and the Germans manage to impose a truly modern continental regime. In this sense, his proposal is not primarily a matter of re-establishing political accountability by containing the central state apparatus, insisting on subsidiarity and limiting the basic political unit to a size small enough to allow for direct citizen participation and accountability within a context of maximum democratic legitimacy. Rather, the main objective is to break with a pre-modern handicap in order to join in a more suitable partnership with central European neighbors. No wonder the South never bought the League's program and saw it essentially as another instance of Northern *chutzpah* and raw self-interest!

One of the most glaring weaknesses of Miglio's arguments is that he buys hook, line and sinker the Weberian thesis concerning the origins and success of capitalism as a function of the Protestant ethic — a thesis not only incompatible with the historical record but, more importantly, primarily deployed as part of a turn-of the-century strategy to legitimate German imperialism in terms of the alleged cultural superiority of North Europeans, i.e., their Protestantism.[2] Even if one overlooks the obvious fact that Lombards are neither Northern Europeans nor Protestants, Miglio's redefinition of ethnicity in terms of socio-economic categories is suspect. If economic development is primarily a function of political freedom rather than ethical proclivities (and in the particular Italian case it was a function of specific political decisions by the Piedmontese bourgeoisie in the late 19th century to use Southern capital to develop Northern industry) then all of Miglio's ranting and raving about "Mediterranean" culture is irrelevant to the issue of modernization. What really matters are local political reforms creating the preconditions for an economic development which takes place rather naturally, in terms of that logic of economic equalization Rudolf Hilferding described at the beginning of this century in *Finanzkapital*.

Even more problematic in Miglio's account is his idealization of this "bourgeois" personality and the concomitant denigration of the "Mediterranean" one — especially at a time when the US and other advanced industrial societies are frantically attempting to confront the devastating consequences of the inevitable

2. For a systematic refutation of Weber's thesis, see Luciano Pellicani, *The Genesis of Capitalism and the Origins of Modernity*, tr. by James G. Colbert (New York: Telos Press, 1994). For a critical evaluation of Pellicani's arguments, see Ludovico Martello, Sulla Genesi del Capitalismo (Rome: Armando Editore, 1992) See also "Symposium on Weber's *The Protestant Ethic*" with contributions by Richard van Dülmen, Guy Oakes and Paul Piccone, in *Telos* ((Winter 1988-89),pp. 71-108.

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disintegration of the kind of personality engendered by fully developed "bourgeois" culture through pathetic policies such as "multiculturalism" and other forms of social engineering. What capitalist ideologists advertised as "cultural superiority," i.e., instrumental and formal rationality, was always parasitic on a more fundamental substantial rationality inherited from traditional cultures — precisely what appeared as an irrational residue and was consequently condemned to extinction through rationalization. As critics of capitalism, from the Frankfurt School to Christopher Lasch, never tired of emphasizing, it is not the Marxists' falling rate of profits which undermines capitalism but the fact that "bourgeois" culture destroys the socio-psychological and cultural preconditions for its own reproducibility. Thus the Lombards' socio-economic success has nothing to do with their alleged bourgeois predilections, but rather with the fact that while undergoing capitalist rationalization they have somehow managed to retain a heterogeneous traditional framework as a shield against bourgeois cultural disintegration.

At any rate, even if Miglio's peculiar Lombard brand of Weberianism made sense, it would still provide a poor cultural foundation and justification for a federalism predicated only on the economic status of the particular regions. It would amount to an unwarranted hypostatization of a fiscal/administrative problem to a constitutional level where it does not properly belong. Eventual economic homogenization would therefore legitimately undermine such economistic federal arrangements and reintroduce all the problems of the central state. Ultimately, Miglio's federal solution is not aimed at the general structural problem of ungovernability typical of all modern states attempting to forcibly homogenize their heterogeneous populations into a "nation" upon which to subsequently impose whatever moral agenda happens to be embedded in particular Welfare State projects marketed under the wrappings of liberal universalism. Rather, as Southern Italian critics have insisted, it is more a matter of a fiscal opportunism meant to cut the North's losses in the futile attempt to modernize a backward South through a corrupt and wasteful central state.

This explains why, following Miglio's approach, the key federal question of what constitutes the basic federal unit is entirely a matter of functional economic considerations rather than natural, political, cultural or even ethnic imperatives related to the need to modify Miglio's phrase with Sartre's terminology, to fuse a "population" into a "people," i.e., to turn a "series" into a "group." This also explains why in the past few years his basic federal unit seems to have been flip-flopping between the Lombard region, broader micro-regions, or even a *mitteleuropaeische Grossraum*. What really matters is the viability of commercial relations among equals, rather than what he considers the precondition for a "population" becoming a "people," i.e., ethnic homogeneity and territorial specificity (p. 73).

Here Miglio's hidden positivism drives his account into a series of contradictory positions. If the Lombards are nothing more than good old *bourgeois* citizens,

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why insist on regionalism at all? The traditional capitalist levelling project so well described by Marx in *Capital* is more than sufficient to turn everyone into a bourgeois (never mind the problem with the proletariat, which ends up structurally cut out of this pseudo-universalistic logic and consequently raises the question of a real universalism and homogenization in terms of the radical alteration of property relations). If bourgeois homogenization were actually possible, then there could be no federalist objection to the liberals' dream of a unified world government over a humanity homogenized on a global level. Here Miglio's insistence on a regional particularity predicated on a vague "species homogeneity" (*omogeneità di stirpe*) would either boil down to a defense of privilege or else reduce to biologistic claptrap and racist ideology. Regional homogeneity cannot possibly mean anything of the kind. It merely refers to the acceptance and internalization of the kind of juridical arrangements the population develops democratically in the process of constituting itself into a people by institutionalizing cultural particularity and codifying a life-style — something Miglio readily admits the Lombards obviously lack.

Unlike in the case of Habermas' *Verfassungspatriotismus*, however, these juridical norms are not merely formal covenants or, to use Miglio's terminology, contractual stipulations reached consensually by any democratically constituted popular assembly. Rather, they are the conceptual otherness of an internalized order constituted over time as religion, morality and *doxa* — those *nomoi* rooted at the very beginning of a people's history and conditioning its entire subsequent development. Since all people's histories are specific to them, this constitutes their particularity within a territorial context defined by direct, face-to-face interaction predicated on a shared internalized culture.

This functional homogeneity has nothing to do with biological, religious, or linguistic traits but with acceptance of the predominant legal, economic and social culture understood as a dynamic living entity growing and changing by learning from other cultures, spontaneously overcoming internal inconsistencies and constantly reconstituting itself according to the vicissitudes of its particular history. The integrity of these cultures is not threatened by "foreigners," immigrants or other allegedly external elements, always all too visible and thus ready to provide convenient candidates for scapegoats to explain away whatever problems may develop as a result of internal weaknesses in the dominant culture. Rather, it is under constant attack from an Enlightenment universalism and liberalism associated with capitalism, which can only read their particularism as irrational pre-modern residues preventing their integration into a universal culture seen as the only legitimate one. This problem is particularly severe in cultures traditionally receptive to external influences and therefore always engaged in a process of both integrating the other and learning from it. Liberalism and Enlightenment universalism can only interpret this confusing heterogeneity as social pathology — rather than cultural health — and must consequently attempt either to privatize or "rationalize" it within its allegedly superior universalistic

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framework. However, since values and norms do not grow on trees or fall from the sky, nor can they be deduced from the necessary preconditions for communication or interaction, universalism is inherently fraudulent to the extent that, in order to deploy concrete norms and procedures, it has to illegitimately hypostatize the particular to the level of the universal. The results is either *de facto* cultural imperialism or cultural nihilism or both, when the predominant culture succumbs to liberal hegemony and legislates itself out of the picture.

Federalism provides a solution to this predicament by guaranteeing local or regional autonomy, which simultaneously translates liberal universalism into contractual constitutional arrangements among the various autonomous units federating into broader forms of political organization. From a rigorous constitutionalist perspective, Miglio has developed precisely such a scheme. However, to the extent that his positivism prevents him from articulating an adequate account of culture — how cultures constitute individuality and of the kind of problems that result when liberal universalism attempts to checkmate particularistic cultures out of the socialization process (as has happened in the US and, in many respects, accounts for the growing American urban crisis) — his "neo-federalism," as he prefers to call his federalist proposal, remains one-sided and vulnerable to liberal readings. Such an interpretation would have the counterproductive outcome of prefiguring a liberal federalism where a strong central state would relegate the federated units to mere administrative units with no right to defend their cultural particularity, fiscal autonomy and political accountability — something not altogether different from the US "federal" system. Thus Miglio himself at times has described the outcome of his proposals as not too unlike the US system, unaware that liberal universalism in the US has gradually turned the federal system into nothing more than an administrative scheme for the oversized nation-state the US has become since the New Deal.

Similarly, without a cultural component predicated on more than immediate self-interest, Miglio's federal units would lack any *raison d'être* other than economic expedience. They would not be able to solve the legitimation problem of practically all liberal democracies, i.e., growing democratic deficits rendering these states increasingly ungovernable by widening the gap between the governing elites and their former citizens now reduced to the status of passive clients. As such, Miglio's proposals would lose their broad appeal for all liberal democratic states confronting increasing legitimation, rationality and motivational crises and remain a provincial Italian matter not generalizable beyond the context of the particular history of that country. Worse yet, in remaining particularized as a solution to an exclusively Italian political pathology, this federalist revolution would misunderstand its own success, thus facilitating its eventual failure and slide back into the folds of a "new and improved" unitary state. When all is said and done, the fate of the Northern League and of the federalist option during the last few years is to a great extent a result of timing. They came into

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being at a time when conditions for their reception could not have been better: at the particular historical juncture when the end of the Cold War no longer prevented the crises of liberalism and the end of the *jus publicum Europaeum* from reaching their logical consequences, while the project of European unification prefigured the possibility of alternative modes of political organization beyond the traditional nation-state.

Predicated on the permanence of a bipolar world defined by the Cold War, European unification was originally prefigured as an aggregation of more or less similar nation-states constituting a new power bloc. The objective was to redefine geopolitics with the creation of a new superpower equal in stature to the other two. That scenario was irreversibly altered in 1989. No longer confronted with a threatening Soviet Empire, but still bound to the US through a NATO now increasingly ensnared in a terminal identity crisis, the original EC project lost its *raison d'être*. The EC's embarrassing inability to reach coherent collective decisions concerning major international crises have made its internal paralysis all too evident. In the absence of a totalizing other, national interests are gradually reasserting themselves by default, precisely at a time when nation-states grow increasingly weak as a result of the globalization of the economy and new developments in communications. Unable to unify, Europe today is even more unable to go back to the *status quo ante* obtaining prior to the development of the bipolar world — that *jus publicum Europaeum* which defined European international relations since the end of the Renaissance. The growing irrelevance of Maasstricht can only mean the beginning of something entirely new, at this point largely undetermined. European unification is still both desirable and necessary, but not in terms of the old Cold War framework.

Contrary to premature projections of an imminent universalization of liberal democracy, post-1989 politics have once again brought to the fore the internal vacuity of a liberalism able to weather its various legitimation crises for most of this century only by presenting itself as a less unpalatable alternative to communism and fascism. Inextricably embroiled with the nation-state, liberalism has long since forfeited its classical principles in favor of a "new and improved" statist alternative engaged in artificially reconstituting a national community — an oxymoron doomed to fail, since communities can only develop spontaneously, out of the collective experiences of a people interacting directly over a long period of time. Today liberal-democratic nations are not only too big to deal with practical domestic problems and too small to tackle large geopolitical ones, their artificial identity, laboriously constructed over the past two centuries with a confused combination of ethnic, linguistic, religious and general cultural traits, has weakened beyond redemption. Lacking the unquestioned totalizing otherness provided by the Cold War, the 21st century new world order threatens to be characterized more by the likes of Bosnia, Rwanda and Somalia than by that generalized "American way of life" so effectively marketed world-wide by the culture industry and

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equally despised by all local elites. The political task today is to figure out ways to aggregate the ethnic ruins of the likes of Yugoslavia, Rwanda, Somalia, etc. in new geopolitical units guaranteeing local autonomy and particularity, while preventing unmanageable conflicts. Here federalism is extremely relevant, but not the US variant allowing no autonomy to the federating units, nor the old Soviet model as a tool of hyper-centralized *Parteiherrschaft*. Rather, it is Miglio's constitutional model which seems to make the most sense, independently of its unnecessary liberal/bourgeois Weberian cultural baggage.

Today even stable "liberal democracies" held together by various variations of that Welfare State deployed so successfully between the two world wars under radically different political regimes (fascism, Stalinism or the New Deal) are increasingly unable to orchestrate a minimal consensus without which society becomes ungovernable. More and more, the old order is able to legitimate itself only by default, i.e., because of the lack of concrete alternatives and the difficulties encountered in attempting to alter existing arrangements. In this respect, the recent US elections (but also elections in most European countries) are paradigmatic. The two main issues which have resulted in a major debacle for the Democratic Party — taxes and crime — are codes for widespread dissatisfaction with current administrative practices seemingly unable to guarantee minimal personal security, and a growing dissatisfaction with central government in general (against which fiscal censures through referenda have turned out to be a formidable vote of no confidence). While this dissatisfaction has yet to translate into concrete proposals for the reconstitution of communities *independently of state steering* or for the dismantling of the powerful centralized state ushered in by the New Deal, calls for the abolition of the welfare system and of what until very recently were extremely popular bureaucracies such as the Social Security Administration (projected to go bankrupt sometime in the foreseeable future) are clear symptoms of what is to come after neo-conservative Republican efforts to deploy a "liberalism with a human face" (neo-conservatism) have failed. The specter of a major realignment beyond traditional Left/Right, liberal/conservative lines haunts American politics.

In a post-industrial world integrated by computer technology and instant communication, the old social contract between labor and capital (itself a domestic microcosm of the old bipolar geopolitical configuration) has gradually become politically irrelevant. Ironically, the obsolescence of the social figure of the "worker" and the "job" is looming on the horizon, not as a result of some variation of that mythical proletarian revolution so central to 20th century collective imagination, but because of the end of modernity as a project whose unprecedented prosperity and technological explosion successfully occluded its contradictory character. The "independent contractor" that displaces the worker no longer needs the mediation of the state in his dealings with a capital itself undergoing radical decentralization and federalization, but must, nowadays,

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increasingly rely on whatever remains of informal communities.[3] Thus the gradual but inexorable erosion of those internalized traditional structures presupposed by a logocentric modernity unable to function without them poses the task of replacing its increasingly bankrupt institutional expressions (the nation-state, central planning, instrumental rationality, economism, etc.) with new modes of social organization — not merely as utopian projects but, first and foremost, as necessary conditions for the very existence of viable socio-economic relations.

The passing of modernity has also precipitated the decline of faith in a notion of "progress" long since discredited as the theological residue of traditional Christian eschatology but still an integral part of Western conventional wisdom. What this has meant is that failed projects of socio-political organization are no longer regarded as gone once and for all but simply as alternatives not actualized and still susceptible to possible re-cycling under changed historical conditions. In the particular case of the decline of the nation-state, this changed perspective has led to the reconsideration of old forms of political organization, first among them federal and confederal models. Not surprisingly, this reconsideration has become all the more urgent in countries where the crisis of the state has been most intense and the project of modernity least effective. This helps explain why the question of federalism, which has engulfed all of Europe, has become most central in Italy — a country which, because of the strength of its traditional values (probably having to do with the Catholic Church's spiritual hegemony) and localism (as a result of its peculiar geography) was never successfully unified and consequently developed a particularly distant, unresponsive and corrupt pre-modern administrative apparatus (typified by the so-called *partitocrazia*). This explains the current relevance of Miglio's constitutional proposals and why they may be at the center of discussion when the long-overdue rewriting of the Italian Constitution will eventually begin. At that time, however, it will be also essential to work out concrete alternatives to his hyper-modernist cultural federalism, predicated on cosmopolitanism, bourgeois, relations and a world defined exclusively by contractual arrangements.

Paul Piccone

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3. All of these ideas have been articulated exceptionally well by Miglio himself in *Una Costituzione per i Prossimi Trent'Anni: Intervista sulla Terza Republica*, ed. by Marcello Stiglieno (Bari: Laterza, 1994). Lacking a concrete communitarian cultural perspective, however, Miglio cannot rely on the informal dimension to compensate for the rationality deficits generated by his decentralizing schemes. Consequently, his famous "interview" fizzles out with an incredibly complex and occasionally contradictory discussion of formal labor legislation sufficient to reassure all Roman bureaucrats fearing for their jobs (as a result of federal decentralization) that there will always be plenty of openings in the Ministry of Labor.

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Miglio's Political Quest

Gianfranco Miglio, *Le Regolarità della Politica* (Milan: Giuffé Editore, 1988), 2 volumes, 1104 pp.

A collection of essays and speeches produced since 1942, this anthology bears witness both to the learning and the analytic sharpness of its author. Edited by his students, it underscores Miglio's journey from an advocate of a reformed Italian state to a Lombard regionalist and architect of the Lega Nord. Now in his seventies, this longtime professor of government at the Catholic University of Milan has reaffirmed his own Lombard roots both culturally and politically.[1] At least half of the more than 1,200 pages in this collection present Miglio's evaluations of two conspicuous failures in the attempt at building a credible Italian state — one in the 1860s and the other after the fall of fascism. The first was during and after the Risorgimento, when a national government of shifting party coalitions was first formed. Neither the regional prefectures nor the monarchical executive were then in a position to counter the *padroni trasformisti* — the coalition-bosses who formed the barely distinguishable right and left-of-center parliamentary alliances of the late 19th century. Party leaders like Francesco Crispi and Giovanni Giolitti, as Miglio observes, ruled Italy by distributing contracts and concessions among their clients.

Miglio argues that the Risorgimento's mistakes were repeated with the overthrow of the fascists and the creation of an Italian republic. The postwar Italian constitution created a figurehead presidency, together with a supposedly powerful national legislature. The rationale for this structure was the need to overcome the fascist legacy by educating Italians in the operation of parliamentary government. The only objection to this voiced in 1946 came from the engaged socialists, the *azionisti,* who identified Italian reeducation with executive control. Miglio notes that the *azionisti* were right, but did not grasp fully all the continuities in the Italian political past. A strong executive would indeed have been a welcome departure from the Italian past, for the fascists also resorted to the tried-and-true practice of *trasformismo* (447-87; 901-26). Miglio seems riveted on the prolonged agonies of the Italian parliamentary experience, which may explain his disenchantment with the First Republic.

His ideas about regional politics are clearly shaped by his frustration in trying to reform the Italian *partitocrazia.* This concern comes through in almost all his essays, from the postwar period to the present. He regrets that the current constitution produced by the three-party anti-fascist opposition of Christian Democrats,

1. For the author's retrospective remarks on his own background and development, see pp. XVII-LXXV.

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Socialists, and Communists worked to undercut the popular sovereignty that should be inherent in a sound democracy. In paragraph three of the postwar Constitution, the drafters confined expressions of the popular will to "what lies within the limits of the Constitution." Providing for neither regular referenda on important political questions nor a powerful president elected by the citizens, the Italian Republic's founding fathers equated democracy with the give-and-take of party politics (887-92). This, argues Miglio, was both understandable and regrettable: understandable in terms of their distrust of a nation which they believed had been seduced by Mussolini, deplorable in terms of the corrupt and leaderless political future to which they condemned the Italian people.

Essential to the weakness of Italian parliamentarianism, according to Miglio, is its inability to escape the "Burkean paradox." Already in 1770 the English statesman Edmund Burke, in his "Thoughts on the Cause of the Present Discontent," upheld the authority of parliament as the source of English national sovereignty. In statements Miglio should have cited but does not, Burke expressed the opinion that the "King's men" under Lord Grenville were undermining the English Constitution by defying the instructions of the House of Commons. According to Burke, it was the "first duty of Parliament to refuse to support government, until power was in the hands of persons who were acceptable to the people, or while factions predominated at court in which the nation had no confidence." Yet, says Miglio, it is precisely parliamentary politics, because of its factional nature, that subverts the leadership necessary for effective popular government. In an address to his electors in Bristol in 1774, Burke tried to resolve this quandary of a self-negating parliamentary sovereignty by redefining representation to mean virtual rather than direct substitution of delegates for their electors. According to this logic, members of the House of Commons represented the best interest rather than changing individual wills of those who sent them. Though a clever move to free representatives from encumbering concrete interests, explains Miglio, this Burkean redefinition of representation has remained unacceptable in most European parliamentary regimes (858-64).

Miglio then goes on to challenge the notion of a normatively-constructed politics of compromise, which he finds in Hans Kelsen. According to Kelsen, governing takes place through conflict-resolution. But what makes rule possible, according to Miglio, is exactly the opposite, that a majority or willful minority can make others submit to its decision. Contrary to Kelsen's opinion, it is not "what unites" that forms the basis of compromise, but the inability of any one group to lead (869). In fact, it is this, argues Miglio, that has produced the "consociative democracy under which postwar Italians have tried vainly to govern themselves. No Italian parliamentary government has been willing to act decisively for long periods of time, lest it anger its coalition-partners, drive labor unions into strikes, and/or bring about a constitutional crisis" (449-74; 853-55).

Miglio offers a scathing portrait of a defective Italian executive, which is

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always looking for "an escape from the courage to be unpopular (*latitanza del coraggio dell'impopolarità*)" (856). In the face of risky responsibility, "the government distributes positions of power and political perquisites, not only among the parties which constitute the majority but also among the strongest factions among the opposition; thus it seeks to obtain surreptitiously the collaboration and complicity of the minority for the proposal of norms and the choice of operational guidelines, while attempting to ensure the consensus or at least the neutrality of all the political and social components by removing all force from the opposition." This strategy of neutralization results in rendering the government hostage to those factions it sets out to bribe. Its policy of compromise reflects an aversion to leadership, which it justifies by appealing to the "glorious myth of the modern state as a purely juridical devise" (858).

This negative view of the "constitution without a sovereign" comes from Miglio's experience of postwar Italian politics, as filtered through the ideas of Carl Schmitt. This Schmittian filter is perceptible in most of the essays in the anthology from the sixties on. This is particularly true of Miglio's introduction to the Italian translation of *The Concept of the Political* (1972), which acknowledges Schmitt's contribution to a fuller understanding of the Italian nation state (592-4). Miglio makes an observation here which is further developed by another Italian commentator dealing with the same text, that Schmitt had trouble conceiving of political institutions not related to the sovereign state.[2] This may have been characteristic of Miglio as well, judging by his published comments, reviews, and essays, though by the 1980s his own attitude about the Italian state had changed. Between 1980 and 1983, Miglio directed the work of the "Gruppo di Milano," a body of Lombard scholars proposing an organic, religionalist constitution for Italy. In his eulogy to Schmitt in 1985, Miglio notes that his subject "experienced lucidly the crisis and decline of that conceptual and institutional order, the European state system, grasping the laws and forces from whence that decline had resulted" (107).

Miglio's concern with political regularity seems premised upon certain Schmittian assumptions: that the sovereign state, which arose in late medieval Europe, has already crested; that the "political" as a sphere of conflict marked by the operation of friend-enemy relations will nonetheless continue; and that federal solutions may already be superseding the activities of failed or paralyzed states. There are at the same time other regularities noted by Miglio which are not traceable to Schmitt: e.g., the temperamental differences between Latin and Germanic peoples, the circulations of political elites discussed by Michels, Mosca, and Pareto, and the alteration in Latin countries between parliamentary anarchy and authoritarian solutions. Impressed by political and social theorists, particularly

2. See "La Politica oltre lo Stato: Carl Schmitt," *ibid.*, pp. 754-760; Pier Paolo Portinari, *La Crisi dello jus publicum europaeum. Saggio su Carl Schmitt* (Milan: Comunita, 1983), pp. 233-251.

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Montesquieu, Pareto, Hobbes and Mosca, as well as Schmitt, Miglio might have done better to express such admiration without portentous references to "regularities." There is in fact little evidence in Miglio's work of the kind of "value-free science" which he attributes to himself and claims to have taken from another intellectual hero, Max Weber [LX; 201-15].

More appealing is Miglio's passionate engagement in the central political problems of our age. His own political thinking is largely shaped by the crisis of the state as illustrated by the Italian regime without a sovereign. Though resigned in his earlier writings to a new "*stato per ceti*," regimes centering on party bosses and their clients, he rejects this as ultimately unworkable. Institutionalized corruption without personal leadership, he has come to believe, will not likely lead to a stable and accountable national regime. Thus he now appeals to Rousseauian and Jacobin notions of popular sovereignty, calling for an Italian state built on referenda and a popularly elected executive (902-25).[3] There is no evidence that he was swayed by a new reading of Rousseau or by the speeches of French revolutionaries. What pushed him in this populist direction was an *Italian* problem — the nonaccountability of the *padroni ed aiutanti partitori* in their relations with the Italian people. Democratic sovereignty was the only standard to which one could hold politicians accountable in what is seen as a democratic age.

In the mid-1980s, Miglio found a second poker in the fire — the contractualism of John Locke. This has served him particularly well as the gray eminence of the Lega Nord, a position that he occupied in the early 1990s, until his falling out last spring with Umberto Bossi.[4] Here, too, it is hard to discern long-term consistency in Miglio's theoretical statements. The contractualism informing his arguments in favor of Lombard separatism is often improvised and even hand-to-mouth. It does not reveal any genuine admiration for the sources invoked, whether Locke or Henry David Thoreau, whose writing on civil disobedience Miglio has recently edited.[5] In the anthology one encounters repeatedly the

3. See Giorgio Ferrari, *Gianfranco Miglio: Un giacobino nordista* (Milan: Liber, 1993).

4. Miglio attacked Bossi for abandoning neo-federalism in pursuit of national political stature and Bossi blamed Miglio's disappointment after not being named Minister of Justice in the Berlusconi cabinet. See Gianfranco Miglio, *Io, Bossi, e la Lega. Diario Segreto dei mei Quattro Anni sul Carroccio* (Milan: Mondadori, 1994).

5. Gianfranco Miglio, *Disobbedienza Civile* (Milan, Mondadori, 1993). In a deeply revealing statement in his contribution to *Verso una Nuova Costituzione*, the compilation of essays published by the Gruppo di Milano in 1983 republished in *Regolarità* as "Una Repubblica Migliore per gli Italiani," Miglio reluctantly concedes that only "contractualism" can be taken seriously in current political discourse. Therefore Italians will live by "rules," but among them must be that "the rule of the majority not only decides but may use force to impose its decision." See *Regolarità*, *op. cit.*, p. 872. Miglio also concedes the tactical basis of his interest in Thoreau in *Io, Bossi e la Lega*, *op. cit.*, p. 34. He brought out the Italian edition of *Civil Disobedience* to provide a "solid theoretical basis" for a Lombard tax revolt which failed partly, it is suggested, because of a delay in publication.

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quintessentially Schmittian distinction between liberal contractualism and political bonding. Miglio makes this distinction while treating contractual theories of government as a hindrance to creating sovereign states. His recent appeals to Locke are no more than a *pis aller*, an attempt to build a "*nuovo assetto politico*" upon the dominant ideas of the time. It is those democratic and liberal ideas that now have purchase which Miglio seeks to incorporate into his federalist solution. Needless to say, he only embraced that solution once he had abandoned hope for an Italian state along populist lines.

What defines Miglio's work then is not a consistent political philosophy but the persistence of a crisis — the non-workability of a received political model. Italy has failed to evolve into a credible state, and its liberal, parliamentary constitution is impractical and corrupting but also entrenched. Miglio does not see that this crisis corresponds to another related one in the Anglophone world. He is simply wrong to believe in a significant "divergence between Anglo-Saxon and Latin democracies, the latter being characterized by a hypertrophy of the public sector," or that in Anglo-Saxon countries, unlike Italy, "the vocation of politics as a profession involves only a small part of the ruling classes" (853). Throughout the anthology Miglio states the mistaken impression that the US, Canada, and England are bureaucratically lean states, without expanding public administrations. Nor does he recognize that Protestant Anglophone peoples are ceasing to be such in any significant cultural sense. In fact they have developed regimes which regulate family and gender relations in a way that would be unacceptable to Latin peoples.

Miglio makes a futile attempt to ground his neofederalism in a historical inevitability that is not convincingly demonstrated. In an essay "*Ex uno plures*" (1993), Miglio presents the fall of the Berlin Wall in 1989 as marking the end of the European state system (1007-1074). The 17th century European political order had been replaced after WWII by a bipolarity centered around the US and the USSR. The most significant friend-enemy distinction had moved from a long stable, polycentric configuration into a global polarity. The conflict between Communists and their opponents ceased to determine political groupings once the Soviet empire fell apart. Thereafter, according to Miglio, Europe has been moving toward a kind of neofederalism foreshadowed by the medieval world. Intense political identities have reemerged at the regional or local level, while contractual arrangements are coming to define the relations of discrete regions toward larger centralizing units. This has become the pattern of organization which, according to Miglio, Schmitt only glimpsed as one among other possible European futures.[6]

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6. This self-ascription by Miglio of the role of completing Schmitt's futurology is already present in "Beyond Schmitt," published in this issue of *Telos*. Miglio attributes his own superior prognostic power not only to his point in time but to his relatively "value-free" perspective. Unlike Schmitt, he lets his reader know he has turned his back completely on the European state-system, which has become internally unworkable and externally outmoded.

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What Miglio holds up as good constitutional republicanism, in his essay on the bad Mediterranean kind (1987), does not square with his earlier attitudes about political life in general. In his more emphatically Schmittian phase, he spoke scornfully about the "*stato di diritto*" and about liberal legality as an ideal. By the late 1980s, however, it is precisely these liberal legacies that he thinks Mediterranean people should have but do not. Are we to believe that the present Italian constitution would have been workable if Americans had lived under it, that the strong feudal allegiances so noticeable among Italians are due to corrupt national character?[7] Is the "*mentalità di camorra*" a characteristic of Sicilian village life as it developed in a certain time frame? Or is the entire Mediterranean culture, as Miglio wishes us to believe, steeped inevitably in underworld vice? If the latter is true, why does he bother to propose a constitution for a second Italian republic, which must repeat the evils of the first, given the ineradicability of Italian character? Miglio's polemics against the Italian republic are often enlightening but occasionally strained. They indicate the problem of republishing so much written over many years, even by a brilliant thinker.

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7. Miglio contends that what seem "pathological cases" of misgoverning in other societies are typical of the Mediterranean world. The flouting of legal procedures, the privatization of government office, and arbitrary personal rule are all seen as inherent in Italian culture. Because the "deformation of the Italian public order" is so deeply rooted, Miglio believes "it is not at all unreasonable to think that things will continue to get worse indefinitely."

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A Child's Garden of Tyranny

Lani Guinier, *The Tyranny of the Majority: Fundamental Fairness in Representative Democracy*, foreword by Stephen L. Carter (New York: The Free Press, 1994), 308 + XX pp., $24.95.

The debacle surrounding Lani Guinier's short stint in the spring of 1993 as the Clinton nominee for Assistant Attorney General in charge of Civil Rights has been taken by many — including Stephen Carter and former President Gerald Ford[1] — to be an episode of embarrassing unfairness. Perhaps so. Whatever one wishes to say about the current sorry state of confirmation procedures,[2] the withdrawal of Guinier's nomination reveals less about those procedures than it does about the chronic fits of mawkish confusion which plague the Clinton White House. Still, the very lack of concrete knowledge about the exact nature of Guinier's infamous "views" has made it possible for some[3] to present her as a martyred visionary who would have contributed to a remaking of American democracy if only the media and the President had given her a chance. Leaving aside questions about whether an Assistant Attorney General is (or ought to be) in a position to do such wholesale remaking, this "martyred visionary" thesis can now be subjected to public scrutiny, thanks to the appearance of the present collection of Guinier's articles and speeches.

The content of Guinier's vision, which includes a therapeutic model of political legitimacy, a call for expanded and continuous federal judicial and bureaucratic intervention into local electoral situations, and a distrust of majority rule, is neither surprising nor innocuous. What is surprising is the degree to which even Guinier's critics share many of her key assumptions.[4] The noisy turmoil surrounding Guinier's nomination was indeed shallow and disturbing, but not because "genuine debate was shut down by techniques of stereotyping and silencing" (18). The

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1. See Stephen Carter, "Foreword," pp. xi, xix-xx, and Ford's book jacket blurb.
2. For a discussion of the importance of Supreme Court confirmation procedures, see Moishe Gonzales, "Race vs. Gender: The Post-Modern Politics of the Thomas Confirmation Hearings" in *Telos* 89 (Fall 1991), pp. 121-6.
3. See "Comment: Idea Woman" in *The New Yorker* (June 14, 1993), pp. 4-6. Guinier presents herself, both in the present volume and in a recent interview on C-Span (*Booknotes*, aired on June 26, 1994), as some sort of "martyr for ideas."
4. In his "Foreword," Carter makes much of the fact that many of the ideas and electoral remedies "that her opponents found so radical had actually been fashioned in civil rights litigation led by the two previous administrations, both the domain of conservative Republicans" (xi). Carter presents this as evidence that Guinier is in the "mainstream" of civil rights thinking. True enough; what remains insufficiently examined, however, is the degree to which this "mainstream," tacitly endorsed by both parties, is polluted by a pernicious bureaucratic nationalism.

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disheartening thing was that questions concerning the appropriate power and scope of the federal civil rights bureaucracy — questions about federalism and the nature of "self-government" — were hardly broached at all.

First and foremost, *The Tyranny of the Majority* is an attempt to cash in on Guinier's accidental notoriety. It seems a difficult task to present a collection of fairly turgid law review articles as a "current affairs" page-turner, but that is exactly what has been attempted here. A hasty marketing makeover has left much of the book intact: a few redundant passages have been clumsily excised, the vast apparatus of law review footnotes has been (largely) retained but converted into supposedly less obtrusive endnotes (over one hundred twenty pages). Short summary passages have been attached to the beginning of each chapter. No attempt has been made to clarify or harmonize conflicting claims made at different points in the book (for example, the conflicting claims about gerrymandering made in chapters two and five)[5] but a great deal of energy has been expended attempting to turn these law review articles into a Donahue-ready, touching record of personal travail. Thus there is a foreword, an introductory chapter, an acknowledgments page, and an epilogue replete with ostensibly moving personal anecdotes, with references to Guinier as a "poet" (307), with sweeping metaphorical claims about the significance of her nomination drawn from the popular literature of addiction: "My nomination became an unfortunate metaphor for the state of race relations in America. My nomination suggested that, as a country, we are in a state of denial about issues of race and racism" (19). All this is aimed at making a connection between the unfair treatment Guinier supposedly received at the hands of the media and the Administration and the unfair treatment racial minorities supposedly receive under majoritarian democracy. Such a connection is made possible through the invocation of the magic word "denial": those who would not support Guinier's nomination — by implication, most of the country — are in need of some sort of racial therapy, some kind of diversity training. Such an implied allegation is consistent with the largely therapeutic accounts of fairness and legitimacy given throughout *The Tyranny of the Majority.*

Leaving aside these sporadic lurches into the confessional mode, Guinier has three main themes. The first is the wickedness of the Reagan Administration's polarizing onslaught against civil rights and the virtue of the stalwart bureaucrats in the Civil Rights Division of the Justice Department who did their best to withstand that onslaught. This theme is the primary subject of chapters two and six. The discussion of "polarization" (38) sets the stage for the second theme: Guinier's criticism of "single-member districts" and their place in the "theory of black electoral success" (41), coupled with her call for the institution of some version of "cumulative voting" (95) in certain circumstances. This theme dominates

5. Compare the protest against racially gerrymandered districts (27-8, among other places) with the claim that "all districting is gerrymandering" (274, 135).

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chapters three and four, which contain the core of the "controversial views" for which Guinier's nomination was attacked and eventually withdrawn. Lastly, chapter five expands Guinier's earlier criticisms of single-member districts into a general criticism of districting as such. This chapter, published originally in the *Texas Law Review* just after Guinier's nomination was withdrawn, is in fact far more startling than anything in the allegedly shocking earlier articles. The assault on the legitimacy of geographical political jurisdictions made in chapter five unambiguously reveals the vapid bureaucratic nationalism which animates not only Guinier's version of politics as racial therapy, but most other versions of multicultural politics as well.

One of the central ideas in Guinier's work is that the US is a racially polarized society, and that this polarization is largely the result of the Reagan Administration's failure to enforce adequately the Voting Rights Act (22). Both parts of this polarization thesis are crucial to Guinier's larger project. The institution of the cumulative voting schemes she favors can only be justified, as she repeatedly claims (see, e.g., 60-1, 221-3), if racial polarization has led to "permanent minority losers" (43) at the voting booth. Drawing on John Hart Ely's theory of judicial review,[6] Guinier claims that blacks are just such "systematic losers in the political marketplace"; blacks are a "pariah group" (37). Whites will not vote in large numbers for black candidates, particularly not for a high office (33). Further, representatives elected primarily by black voters tend not to become part of any governing coalition, due to racial prejudice in the legislative body (be it city council, state legislature, or whatever) fostered by the fact that white representatives' "homogenous white single-member district base enables them to ignore black interests without adverse electoral consequences" (65). In Guinier's view, blacks are forced into a political bind: no members of the "legislative majority" (65)[7] need to compete for black votes, thus representatives who represent black voters must either ignore the interests of their constituents and ingratiate themselves with the ruling

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6. See John Hart Ely, *Democracy and Distrust* (Cambridge: Harvard University Press, 1980).

7. The phrase "discrete and insular minorities" comes from the famous footnote four in *United States vs. Carolene Products Co.*, 304 U.S. 144 (1938): "[P]rejudice against discrete and insular minorities may be a special condition . . . curtail[ing] the operation of those political processes ordinarily to be relied upon to protect minorities and may call for a correspondingly more searching judicial inquiry." This New Deal decision set the stage for many sweeping civil rights Supreme Court decisions from the 1940's to the present. See Bruce Ackerman, "Beyond *Carolene Products*," in *Harvard Law Review* 98 (February, 1985), pp. 713-46. Ackerman provides a number of telling arguments against the claim that "discrete and insular minorities" are especially deserving of federal judicial intervention: "[o]ther things being equal, 'discreteness and insularity' will normally be a source of enormous bargaining advantage, not disadvantage, for a group engaged in pluralist American politics" (Ackerman, pp. 723-4). Unfortunately, Ackerman's main task is to enter a plea for even *wider* and more extensive federal judicial intervention, on behalf of what he calls "groups that are 'anonymous and diffuse'" (Ackerman, p. 724).

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legislative majority or become isolated and ineffective legislators, unable to enact the laws they wish to enact (66-8). So, the theory goes, blacks are not adequately represented within normal political processes; therefore, extraordinary steps, overseen by the Department of Justice, must be taken to insure the protection of this "discrete and insular" minority (73). The Reagan Administration's Justice Department, however, despite the "vigilant efforts of the Department's bureaucrats" (29) and "tenacious career attorneys" (29),[8] sometimes refrained from taking such steps (28-9). By so refraining, the Reagan Administration "perpetuated a racially skewed reality in which blacks vote but do not govern" (30). The Reagan Administration's civil rights policies[9] were based on "conflict" (38) and "inflamed racial polarization" (38). This widespread polarization can be mended ultimately only by "aggressive federal initiatives and legislative reform" (40).

One crucial aspect of Guinier's polarization thesis is that federal intervention into local political situations does not have a racially polarizing effect. In fact, her repeated calls for more common and more sweeping federal intervention into local elections (see, e.g., 38-40, 107), coupled with her claims that "polarization"[10] and

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8. In chapter six, Guinier makes much of the "informal networks of experienced bureaucrats" (171), whose "babble of incoherent voices" (171) threatened the Reagan Administration's drive toward a "unitary, centralized authority" (171). Thus, for Guinier, an entrenched bureaucracy is the very model of a "more participatory and less hierarchical" (173) sort of government. A vision in which deference to such entrenched bureaucrats constitutes a key aspect of a "bottom up" (175) pluralism that values a decentralized "multiplicity of voices" (175) is odd. Apparently it is now possible to present advocacy of an expanding and aggressive federal bureaucracy as a call for decentralized participation. On the tendency of contemporary legal thinkers to see more bureaucracy as more democracy, see "Note: Civic Republican Administrative Theory: Bureaucrats as Deliberative Democrats," in *Harvard Law Review* 107 (April, 1994), pp. 1401-18.

9. It is unclear how putatively lax Voting Rights Act enforcement by the Reagan Administration could have brought about the widespread polarization Guinier alleges (22). A lax federal enforcement policy can only have a polarizing effect on a populace already latently polarized. Guinier herself appears to grant this point (75-82). In his "Foreword," Carter notes that Guinier's supposedly radical remedies for racial polarization were implemented, when they were, largely by the Reagan and Bush Administrations (xi), suggesting a larger degree of continuity in Voting Rights Act enforcement than Guinier's account allows. The "vigilant efforts of the [Justice] Department's bureaucracy" (29) roll on, more or less unimpeded by the superficial changes wrought by Presidential elections.

10. Guinier may be right when she claims that "prejudice flourishes in informal settings" (242). But the mere attempt to bar (racial) prejudice from some formal public sphere will hardly make it vanish; in fact, there is much evidence to suggest that (racial) prejudices can only be weakened or dissolved through the building of informal, associational ties between the groups in question. See Nicholas Lemann, *The Promised Land* (New York: Knopf, 1991); Willie Morris, *The Courting of Marcus Dupree*, second edition (Jackson: University of Mississippi Press, 1992); Christopher Lasch, *The True and Only Heaven* (New York: Norton, 1991), chapter 11; Paul Piccone, "The Crisis of Liberalism and the Emergence of Federal Populism," in *Telos* 89 (Fall, 1991), p. 37; and Jane Jacobs, *The Death and Life of Great American Cities* (New York: Vintage, 1961), pp. 71-3.

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"conflict" (38) are evils to be avoided, suggest that Guinier sees federal intervention as the vehicle of reconciliation (see, e.g., 38-9) and "consensus" (153). That some may resent, with good reason, perpetual federal intervention into local elections seems to have occurred only rarely to Guinier. In fact, she implies that the imposition of a formal, federal, bureaucratic matrix on to local situations may be the only way of combating racial prejudice (80-1, 242). To mention just one counterexample, the recent *Shaw vs. Reno* (1993) case demonstrates that federal laws mandating changes in the racial composition of state electoral districts have — at a minimum — the potential to increase rather than reduce racial polarization.[11]

Guinier's analysis of racial polarization only makes sense if blacks are politically homogenous. Her references to "the existence of group identity within the black community" (57) and to "blacks and whites as politically cohesive groups" (57) confirm that, at least to some significant degree, Guinier endorses the homogeneity assumption. Indeed, Guinier plainly states: "racial bloc voting supports the claim that blacks, to a great extent, are ideologically homogenous on many issues" (67).[12] This is hardly a surprise: as Adolph Reed has demonstrated,[13] the assumption that there is a monolithic "black community" with a definitive and exhaustive set of common interests is a crucial animating assumption behind federal interventions on behalf of blacks "as a whole," which is precisely what Guinier calls for (38-40). Without such an assumption, statistics and anecdotal evidence regarding the inability of legislators to pass legislation in line with the "distinctive interests" of "the black community" (66) become useless, since without the homogeneity assumption there

11. *Shaw vs. Reno* (S. Ct. #92-357) concerned the federally mandated creation — ostensibly pursuant to the Voting Rights Act — of two so-called "majority-minority" Congressional districts in the state of North Carolina. Each of the two such districts was oddly shaped, with District 12 stretching some 160 miles, including small parts of ten widely distributed counties. For much of the 160-mile length of the district, it is "no wider than the I-85 corridor" (O'Connor, J., *Shaw vs. Reno*). The Court did not rule that creation of such a district was a constitutional violation of any kind; the Court merely decided that the appellants who filed suit against the Attorney General had in fact stated a claim, and remanded the case for further consideration in the appropriate lower court. Here, *Shaw vs. Reno* merely demonstrates what should be obvious: federal intervention in state and local electoral situations does not always build "consensus," but can itself generate polarizing resentments of the sort Guinier claims she wishes to ease. At one point, Guinier briefly acknowledges that federally mandated creation of districts such as the one at issue in *Shaw vs. Reno* may lead to "resentment . . . among groups not protected by the Voting Rights Act" (100). However, she does not think any of this potential resentment (the importance of which she minimizes) is caused by federal intervention *per se*, but rather only by the creation of "majority-minority" districts.

12. See also: "disagreements among blacks pale by comparison with the differences in political interest and philosophy between blacks and whites" (98).

13. See Adolph L. Reed Jr., "Black Particularity Reconsidered," in *Telos* 39 (Spring 1979), pp. 71-93.

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is no definitive set of "distinctive interests" which blacks, as a racial whole, share.

Some of Guinier's critics have taken her to task for endorsing a racial authenticity test for representational legitimacy: "she did not consider black elected officials with heavily white constituencies to be 'authentic' representatives."[14] Guinier is at pains to deny that she holds this view of racial authenticity: "[t]he question is: which candidates are the representatives of choice of black or Latino voters? . . . [a]uthenticity subsumes two related but competing views to answer that question" (12-3). The "first version of authenticity" claims that "[a]uthentic representatives are simply those truly chosen by the people" (13). The "second" version is that representatives are authentic only if they share "common physical or cultural traits with constituents" (13). Guinier wisely rejects the second view — that only blacks can represent blacks, only gays can represent gays, only Baptists can represent Baptists, etc.[15] — but she does accept the first view (13). By itself, however, this first version of authenticity is too hazy to mean very much: what are the criteria for deciding who is "truly" chosen, and who are to count as "the people" who do the choosing? The assumption of black homogeneity allows Guinier to give a fairly definite shape to this otherwise amorphous "first version of authenticity": the representatives "truly" chosen by blacks are those who support legislation favoring "black concerns" (58).

Guinier uses the homogeneity assumption in tandem with her claims about racial polarization to generate a vague and undemanding test to determine when federal intervention into state and local electoral (and legislative!) situations is justified. Allegedly, the Voting Rights Act renders "illegitimate" (80) any voting scheme that "consistently produces disproportionate majority control" (80), no matter how "technically fair" (80) such a scheme may be. One way of demonstrating that there is "disproportionate majority control" of some legislative body is to point to insufficient "legislative responsiveness": "legislative responsiveness would depend on citizen participation, legislative presence, and legislative success in meeting the needs of a disadvantaged group" (69). In other words, the actions of a legislature (or city council, etc.) are illegitimate if "black concerns" (58) are not adequately addressed: in such a case, Guinier implies, federal intervention would be justified under the Voting Rights Act. But this is

14. See Stephen Carter, "Foreword," (x). Carter cites "an Associated Press story at the beginning of June [1993]" as one source of this criticism of Guinier.

15. At least, Guinier explicitly claims to reject this second version of authenticity (13). Often, however, she appears willing to make implicit use of the supposedly rejected conception of authenticity in order to buttress her arguments. For example, Guinier claims that blacks living in majority-white districts are "represented only 'virtually,' if at all" (96). How does she know such blacks are not represented? They are able to vote, and they do in fact have an actual representative, not a mere "virtual" (36-7) one. Such a claim could be the result of a slip back into the second version of authenticity, according to which, e.g., white elected officials cannot adequately represent black voters.

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not all. A so-called "functional approach" to the Voting Rights Act "attempts to enable voters to articulate their own political interests" (89). Well and good. But how do voters "articulate their own political interests?" By becoming plaintiffs in litigation brought under the Voting Rights Act! To determine whether a given jurisdiction is a "racially polarized" (89), one which unfairly undermines black influence, "one method . . . is simply to ask the voters themselves. At what level of population do voting rights plaintiffs consider themselves influential? What benchmark . . . of influence are the plaintiffs themselves using?" (89-90). This means that plaintiffs in voting rights cases ought to be allowed to determine whether they have been accorded adequate legislative influence or whether they are victims of racial polarization.[16] Woe to the defendants in such cases!

It is easy to show, using Guinier's casual standard, that a racially polarized local electoral situation obtains, and thus, that some kind of federal remedy is required. If some "whites still harbor racial prejudice" (60), then "mechanisms to surmount this prejudice and to insure black electoral success are justified" (60). In other words, a vote cast by Archie Bunker is illegitimate by virtue of his racially prejudiced motivations, and thus should not have been counted.[17] On Guinier's view, the Voting Rights Act empowers the federal judiciary and the federal civil rights bureaucracy to take steps to erase the effects of such illegitimate votes. Further, even if federal intervention somehow minimizes or blocks the putatively illegitimate influence of Citizen Bunker, legislators seeking to represent "black concerns" (58) may be defeated by a "legislative majority" (65) guided by different "prejudices and desires" (65); Guinier calls this a "deliberative gerrymander" (65). Thus, if "black concerns" (58) are not enacted into law, this by itself constitutes evidence of significant racial polarization within the legislative body, and federal forces may swing into action.

Guinier repeatedly denies that she relies on the specific character of legislative outcomes as a test for federal intervention: "I have been roundly, and falsely, criticized for focusing on outcomes. Outcomes are indeed relevant, but *not* because I seek to advance particular ends . . . . [r]ather, I look to outcomes as *evidence* of whether all . . . feel that their choice is represented and considered. The

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16. Typically, Guinier assumes that plaintiffs in voting rights cases nearly always have the force of law and justice on their side. Her negative assessment of the Court's holding in *Shaw vs. Reno* (1993) [see chapter five] implies, however, that only voting rights plaintiffs seeking to expand federal intervention on behalf of minorities enjoy such an automatic monopoly on law and justice.

17. Thus, despite her obligatory criticisms of a straw man "liberal individualism" (132), which she apparently conflates with some version of majoritarianism, Guinier endorses a form of liberal nationalism based on distrust of the voting populace and respect for "tenacious career attorneys" (29) and "informal networks of experienced bureaucrats" (171). These "bureaucrats" are expected to perform federal racial therapy to heal the wounds of polarization caused by the unacceptable voting preferences of Archie Bunkers nationwide. See Fred Siegel, "Is Archie Bunker Fit to Rule?" in *Telos* 69 (Fall, 1986), pp. 9-29.

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purpose is not to guarantee 'equal legislative outcomes'; equal opportunity to influence outcomes regardless of race is more like it" (14). This is hard to take seriously, especially since the question of how voters "feel" about the laws their legislators pass is a quite vague one. Guinier attempts to give a more definite shape to this hazy standard of voter feeling by taking "outcomes as *evidence* " (14) of whether voter feelings of dissatisfaction are warranted. But this is hardly an improvement: if the outcomes are to be evidence of whether voter unhappiness is justified, all a voter has to do to demonstrate his lack of "equal opportunity to influence outcomes" is to show that he doesn't like some particular law that was enacted. Someone's preferences did get enacted, and thus, this legislative winner has had more "opportunity" to influence legislation that the dissatisfied legislative loser. The loser can point to the legislature's failure to pass the bill he wanted as evidence for the claim that others have more voice in the legislature. The relation between outcomes and voter feelings is a circular one: the loser is unhappy to be a loser and feels he has been unfairly treated; his allegation of unfair treatment is supposedly borne out by the very fact that the legislation he favored was not passed. The precise difference between appealing to outcomes as "evidence" and insisting that certain legislative outcomes be guaranteed remains unclear.[18]

The above demonstrates one of Guinier's animating concerns: she thinks the existence of electoral winners and losers threatens the legitimacy of a democracy. The "rules" (1) by which a democracy is run may be "perfectly fair in form" (1), but if "they do not make the losers feel as good about the outcomes as the winners, they can seem . . . unfair" (1-2). Legitimacy is a function of what *seems* fair: a process is legitimate if it "follows valid rules to produce results that, even from the perspective of adversely affected parties, are acceptable because of the perceived fairness of the process" (241). If legitimacy is merely a function of what various citizens perceive to be fair, however, it is unlikely that electoral losers will ever *feel* as good about some specific electoral result as electoral winners. Guinier claims she is speaking only about "permanent" (43) electoral losers, but her hazy doctrine of legitimacy allows any perception of unfairness to be the basis for an attack on legitimacy. Here an alleged unfairness is a real unfairness, for the only criterion by which such allegations may be evaluated is what the "adversely affected parties" (241) *feel* to be fair. Guinier claims that "majority rule may be perceived as majority tyranny" (3) by electoral losers, but of course, adoption of some other decision-making procedure more favorable to the losers could easily be "perceived" by the majority winners as minority tyranny. A widespread "feeling" that some political process is fair may be a *part* of what

18. Guinier claims that her criteria for electoral and legislative fairness are "procedural" (14) and thus do not require that "substantive policy outputs of the decision-making process" (14) be monitored or constrained. However, later she writes that "procedural rules, in a very real sense, shape substantive outcomes" (103). The claim that procedural rules do not "constrain" (14) legislative outcomes is, by her own account, a sham.

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constitutes its political legitimacy, but there must be more to legitimacy than this.[19]

The most "controversial" part of Guinier's work, however, is not her focus on legislative outcomes, her account of polarization, or her theory of legitimacy. Rather, what was viewed as most controversial during the period of her nomination were the remedies she advocates for Voting Rights Act violations: institution of cumulative voting schemes and legislative minority vetoes. These arise directly out of her criticisms of the standard federal remedy for such violations: creation of so-called "majority-minority" single-member districts. Guinier finds the following flaws with "majority-minority" districting as a remedial strategy: (a) the strategy wrongly assumes that blacks may only be adequately represented by black legislators (56-9); (b) the strategy marginalizes blacks by minimizing the number of elected officials who need the votes cast by blacks in order to stay in office (65, 232); (c) the strategy ties "black electoral success" (43) to the continuation of "residential segregation" (141); (d) the strategy produces too many "wasted votes" (121) by blacks (and others).

Points (a), (b), and (c) have long been made by critics of "majority-minority" districting, such as Orrin Hatch and Abigail Thernstrom (see 57, 65-6, 232). They are mentioned by O'Connor in the *Shaw vs. Reno* decision. Typically, such critics have called for the return to an "at-large" electoral scheme, in which each legislator is chosen by the voters of an entire city (or county, etc.). For Guinier this is insufficient; the return to "at-large" districting called for by "conservative critics" (65) of "majority-minority" districting would offer no remedy for the effects of "polarization" (66), and it would not necessarily decrease the number of "wasted votes" cast. Therefore, Guinier insists that steps be taken to insure that each significant interest within the jurisdiction has a chance to elect a representative. She claims that such insurance is provided by a semi-proportional representation scheme in which the number of votes needed to elect a representative is far less than fifty percent of the total: she favors an election "threshold" (97) between nine and ten percent (96-7). According to her scheme, each voter within the given jurisdiction would receive the same number of votes to "plump" (97) in a variety of ways: if there are ten city council positions, then on Guinier's proposed plan each voter in the city gets ten votes. One vote may be cast for each of ten candidates, or the voter may award five votes to each of his two favorites, or all ten to

19. Thus Hegel insists that political legitimacy is partially dependent on subjective components, such as the citizens' feelings of attachment for their nation, for without such feelings a nation will not be governable. However, Hegel claims that objective (institutional and historical) conditions determine whether citizens *ought* to be reconciled to their social order, whether and to what degree the demands of law are legitimate. It is these objective conditions that establish political legitimacy, even though the survival and efficiency of the political system also depend on the populace's ability and willingness to "perceive" these conditions. See Michael O. Hardimon, "The Project of Reconciliation: Hegel's Social Philosophy," in *Philosophy and Public Affairs* 21 (Spring, 1992), pp. 167-72.

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the only candidate he finds acceptable out of the whole lot, etc. The purpose here is to give each significant minority interest (racial or otherwise) a good chance to elect a responsive representative.

Independently of the rest of her ideas, Guinier's proposed semi-proportional representation plan may be ill-advised, but it should not have shocked anyone. Such representation schemes are common in Europe and elsewhere, and they have certainly been proposed before. The mere fact that such plans are common in Europe, however, does not (contra *The New Yorker*) by itself constitute a decisive reason in favor of their adoption in the US. Guinier realizes this, and so offers reasons in support of semi-proportional representation, but it is sometimes hard to tell if she favors semi-proportional representation as a last resort (116) or as a positive good (150).[20] Either way, the reasons given are much the same. Semi-proportional representation makes it possible for intense and cohesive minority interests to elect representatives, even if all the members of that minority do not live in a compact area that could be made into a geographical district. This means that every voter has the "equal opportunity to vote for a winning candidate" (122): "[e]verybody's vote should count for somebody's election" (150). This is what Guinier means by minimizing the number of "wasted votes" (121). She also claims that semi-proportional representation leads to a more invigorated electorate (99-100), an increased emphasis on "issues, not the personalities of the candidates" (100), a smaller amount of race-related "resentment" (100) than the creation of "majority-minority" districts, and a heightened sense that the electoral process is fair (101).

A semi-proportional electoral scheme may lead to a more active electorate, since under such a scheme it takes fewer votes to get a candidate elected. This may facilitate mobilization of interested sectors of the electorate. However, running a campaign under such a scheme would probably be more expensive than under a districting plan, because candidates would have to run city-wide campaigns, rather than more limited campaigns aimed only at voters in their particular district. Why semi-proportional representation would lead to an increased focus on "issues" rather than on "personalities" is a mystery: under such a scheme it becomes even easier for attractive local heroes with no appreciable political ideas to get elected. Further, insofar as proportional representation does foster issue-based campaigns, representatives elected with a quite small (ten percent) electoral base may feel responsive only to a tiny slice of the electorate. Further, a ruling coalition of such representatives, each representing a small but

20. *The New Yorker*'s "Idea Woman" (*op. cit.*, p. 6) lists Germany, Spain, the Netherlands, Sweden, Italy, Ireland, Israel, and (possibly) New Zealand as countries using "some form of proportional representation." Some version of proportional representation has been endorsed by, among others, the former leader of the now-defunct *La Raza Unida* party, José Angel Gutierrez (see *La Raza Unida* party papers, boxes 2, 4, and 10, in The Benson Latin American Studies Center, The University of Texas at Austin), and the vulgar futurologist Alvin Toffler. See his *The Third Wave* (New York: Bantam, 1980), pp. 410-31.

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vocal special interest, could easily engage in a policy aimed at doling out public money and other favors to the interests that keep them in power, at the expense of the less vocal and less organized "general" public. Robert Dahl has long argued that Congress itself is the result of a *de facto* similar system: powerful interests working in concert, each endorsed by an intense minority of the nation's populace, tend to get their agendas enacted by Congress more often than a more lethargic and diffuse majority.[21]

These are quibbles. There may indeed be virtues as well as vices in a semi-proportional representation scheme; there is nothing necessarily wrong with a town (or some other jurisdiction) choosing to institute some such scheme. What is serious is that Guinier recommends the institution of such schemes at the behest of the Justice Department or the federal judiciary (107-8) pursuant to enforcement of the Voting Rights Act.[22] It is the connection Guinier attempts to forge between semi-proportional representation and the requirements of federal civil rights policy that is objectionable and unwelcome: such a connection would constitute yet another unwarranted expansion of federal bureaucratic power, under the guise of offering up a less "polarizing" interpretation of the Voting Rights Act. Despite Guinier's disingenuous claims that she is only interested in "broadening the debate" and that she does not wish to see semi-proportional representation schemes "imposed on non-consenting jurisdictions" (277), that is precisely what she argues for throughout the book. Changes in local voting schemes ordered by the Justice Department are almost by definition "imposed on nonconsenting jurisdictions," unless it is the consent of "voting rights plaintiffs" (89) which serves as proxy for the consent of the entire jurisdiction.[23]

Guinier's distress at the "wasted votes" (121)[24] produced by the districting

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21. See Robert A. Dahl, *A Preface to Democratic Theory* (Chicago: University of Chicago Press, 1956).

22. This was noted by Clint Bolick in the first of the supposedly "notorious" editorials against Guinier's nomination printed in *The Wall Street Journal*. See Clint Bolick, "Clinton's Quota Queen," in *The Wall Street Journal* (April 30, 1993), p. A12.

23. Another serious problem with Guinier's version of semi-proportional representation is her continuing emphasis on legislative outcomes. She realizes that the institution of a semi-proportional representation plan may still fail to generate legislation favorable to "black concerns" (58). If such a failure occurs, she claims, then the rules governing the legislative process itself may have to be changed. Perhaps "a cumulative voting process" (108) could be instituted within the legislature, making it possible for a small, but vocal minority of legislators to enact laws that would pass Voting Rights Act muster. Or perhaps minority representatives could be given a "minority veto on critical minority issues" (108). With these suggestions, Guinier's claim that she does not find unfavorable legislative outcomes by themselves sufficient grounds for federal intervention loses whatever shred of plausibility it had left.

24. A "wasted vote," by Guinier's definition, is any vote cast for a "losing candidate" (134) or any vote cast for a winning candidate that is not "necessary to carry the district" (134).

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process — as evidenced by her assertion that "[e]verybody's vote should count for somebody's election" (150) — and her enthusiasm for semi-proportional representation combine in chapter five to produce a wide-ranging and startling attack on the connection between politics and geography. Setting herself against a loose amalgam of views she calls "liberal individualism" (132), Guinier argues correctly that the American political system has always recognized at least one form of "interest representation" (129): geographical representation. Geographical units have long been recognized in American politics as the basis of political representation. Voters living within a particular region or neighborhood are assumed to share some set of common interests, however small, simply by virtue of their proximity and the common setting in which they find themselves. Though the so-called "one-person, one-vote" decisions (*Baker vs. Carr* (1962), *Reynolds vs. Sims* (1962)) diminished somewhat the importance of geographical interests as political factors, the geographical basis of representation is far too deeply embedded in American political life and history to be eliminated without a major Constitutional upheaval. The mere fact that it is the states, not blocks of sheer undifferentiated population, that are the units represented at the federal level in the US (in the Senate, the Electoral College, and even in the House of Representatives, since even there Congressmen represent a roughly equal unit of population *within* some particular state) underscores the fundamental importance of geographical units of representation. Guinier makes use of this well-established connection between politics and geography to attack the claim that voting is an "individual right" (126) which should properly be divorced from the political interests of groups.

So far, so good: Guinier is right to recognize the often overlooked fact that geography, not population alone, is an essential foundation of political representation. Obviously, any serious attempt to reinvigorate federalism in the US (or elsewhere) has to begin with an insistence on the crucial political importance of sub-federal territorial units (e.g., states, for starters). Guinier, however, comes not to praise geography but to bury it. She makes use of the geographical basis for representation only to rebut "liberal individualists" who argue that any sort of basis for representation other than sheer population numbers is illegitimate. This done, she then seeks to demonstrate that dependence on geographical units is an inadequate method for selecting which political interests are represented. She gives two main reasons why geographical districts are flawed as political units. First, there are within any district a number of voters who did not vote for the winning candidate: these voters, in Guinier's view, have no actual representative, since the candidate for which they voted did not become their representative (130). Second, she claims that "geographic associations" (136) are "artificial" (136, 129). She concludes that "race is as effective as geography in functioning as a political proxy" (137), but that "[s]emi-proportional systems" (137) do a better job of representing voter interests than either race or geographical districts.

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The first objection Guinier has to the connection between geography and political representation amounts to a reiteration of her polemic against "wasted votes." She cannot stomach the idea that anyone's preferences do not have a direct bearing on legislation: "a system is procedurally fair only to the extent that it gives each participant an equal opportunity to influence outcomes" (156). The therapeutic vision of legitimacy she espouses — complete with its vague insistence on legislative outcomes that constitute "an aggressive, formal policy that endorses cooperation to modify behavior toward tolerance" (107) — is driven largely by her desire to protect and comfort legislative and electoral losers. Thus, she sees politics as "taking turns" (2): under a political system so conceived, legislative winners get what they want and so do legislative losers, each group takes a turn enacting the laws it likes, there is no more "polarizing" talk of "winning" and "losing," just "consensus-driven" (107) people working together and taking turns. Not surprisingly, Guinier cites a child — her four-year-old son Nikolas (2) — as the originator of this concept of politics. In Guinier's view, majoritarian geographical districts are bad because they do not allow electoral losers to exercise the law-making power enjoyed by the electoral winners. But it is not possible for every citizen's favored set of laws to be on the books at the same time: a vast number of contradictions would ensue. Politics requires the making of decisions, and the making of decisions entails that not everybody will get what they want. (If everybody wanted the same thing, there would no decision to make.) Even semi-proportional representation schemes, such as the one Guinier proposes, do not eliminate "wasted votes" entirely; they merely have the potential to reduce the number of votes that get "wasted." Furthermore, as noted above, semi-proportional representation makes it possible for a coalition of small, intense, and cohesive groups to control a legislative body, perhaps leaving a majority of voters with the "perception" (3) that their votes have been "wasted" (121), since the legislature is not responsive to their "concerns" (58).

But Guinier's key objection to geography *per se* is her second one: that geographical distinctions are "artificial" (136). By this, she means two things: (a) that geographical units are "not necessarily politically homogenous" (129) and (b) that "constituents within a geographically districted group may be there involuntarily, without sharing the same interests as other community residents" (129). To the extent this claim (b) is different from claim (a), it alleges that not everybody chooses where to live; as Guinier awkwardly puts it, "geography is neither discretionary nor individualized for members of disadvantaged racial groups" (141). This is an irrelevant overstatement. It is irrelevant because the traditional reasons for taking geography to be politically important do not rest on the claim that geographical location is a function of individual choice. Rather, geographical distinctions have been taken to have political importance because people living together in a neighborhood, a city, a rural farming

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county, or even a collection of sprawling suburbs are assumed to have *some* common interests due merely to their proximity, and the shared problems and features of life arising out of that proximity. This basis for the political importance of geographical units is not at all undermined by the overstated claim that not everyone *chooses* where they live. It is an overstatement because there is ample evidence suggesting that even the poorest of people often "vote with their feet," migrating to an area they believe will be more hospitable to them.[25] Guinier correctly notes that "voters do not move to an election district; they move to a neighborhood or community" (129). But this is hardly a criticism of the use of geography as a basis for political representation; rather, it could easily be taken as a plea for electoral districts to be drawn in such a way as to respect boundaries of neighborhoods, towns, etc. — according to the "traditional districting principles" mentioned in *Shaw vs. Reno*. Indeed, Guinier draws this implication herself: insistence, by courts, on districts of "absolute population equality" means that "equipopulous districts are more important than districts that preserve communities of interest or leave neighborhoods intact" (130). Yet, in Guinier's hands, what ought to be an objection to the misguided judicial attachment to districts of "absolute population equality" (130) following in the wake of the "one-person, one-vote" decisions becomes a weapon against geography itself.

Returning to (a), Guinier's complaint that geographical districts are "not necessarily politically homogenous" (136) is primarily just a way of restating her plea for the elimination of "wasted votes." She argues that a semi-proportional representation plan creates homogenous "voluntary constituencies based on their [voters'] own assessment of their interests" (149), rather than the politically heterogenous constituencies created by an "artificial" (149) criterion such as residence. But if geographical districts are to be rejected in order to create homogenous constituencies of interest, how far should this rejection be carried? In principle, such a rejection of geography is a rejection of the legitimacy of state and local governments, *because states and localities are geographical entities.* Consider the following example: North Carolina currently has thirteen Representatives in Congress, each elected from a different district. In Guinier's view, if there are enough individuals (by Guinier's formula,[26] roughly 7.143 percent of

25. See Nicholas Lemann, *The Promised Land*, *op. cit.*; William A. Niskanen, "Why Our Democracy Doesn't Work," in *The Public Interest* 116 (Summer, 1994), pp. 88-9; and David Osterfeld, "Radical Federalism: Responsiveness, Conflict, and Efficiency," in *Politics and Process: New Essays in Democratic Thought* (Cambridge: Cambridge University Press, 1989).

26. Guinier's formula (given on 96-7) for calculation of the election "threshold" is: [1÷(1+# of open seats)](voting population)+1 voter. That is, if North Carolina has thirteen Congressional districts, then it has thirteen "open seats." So: [1÷(1+13)] times North Carolina's voting population plus one voter yields 1/14 of North Carolina's voting population plus one voter, or roughly 7.143% of the voting population.

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the voting population of North Carolina) with similar political views scattered around the state to elect a Congressman responsive to those views, they ought to be allowed to do so, even if some of those 7.143 percent live in the Smoky Mountains, some in the tangle of suburbs outside Charlotte, some in the eastern Dismal Swamp, some on the Outer Banks, and some in Raleigh. Why such a constituency, based on "psychological" (152) affinity, should be seen as less "artificial" than a traditional compact Congressional district composed, say, entirely of mountain counties in the western part of the state, is not explained.

This example is a mere beginning. For if Guinier's principle were consistently applied, what could be the basis for the continued existence of states and other sub-national political units? Each of these is an "artificial" jurisdiction, based on geographical boundaries. Why not do away with "artificial" political units such as North Carolina, Wisconsin, and California, and allow like-minded individuals in each of those places to choose a common Congressman? Guinier's argument marches inexorably in this nationalizing direction, although her awareness of this is only occasional. Thus she claims that some "sub-districting" will be necessary "to promote access for local communities of interest" (154). But if her polemic against geography was successful, a "local community" of any kind would be an "artificial" unit which "wastes" votes and would cast doubt on the political system's legitimacy. Despite her disingenuous claims that she favors a "decentralized" (174) vision of government which places a premium on "participatory democracy" (174) and on the "tradition of experimentation and innovation" (239) found in local government, Guinier advocates a series of proposals that, if taken seriously, would hobble and eventually obliterate state and local governments.[27]

Nothing in Guinier's argument prevents drawing the inference that national governments are illegitimate, based as they are on "artificial" geographical boundaries and not on the "self-identified" (97) interests and affinities of their citizens. Her attack on the connection between geography and politics is intended to substitute a "political or psychological" (152) unit of representation for "regional" (123) or "territorial" (152) ones on which the US currently relies, but by so doing, perhaps inadvertently, she undermines one of the fundaments upon which the "concept of the political" rests. In this she finds herself in a typical liberal predicament: she has no room for a notion of sovereignty, and thus, no way to account

27. Guinier notes that some critics of her dismissal of geographical political units "suggest that state boundaries would not survive this approach" (275). She responds rather lamely: the issue of the legitimacy of state and local boundaries "is beyond the scope of this chapter. Suffice it to say that retaining states as units of representation reflects deeply embedded constitutional and tradition-bound constraints" (275). But the whole point of "this chapter" was to attack the legitimacy of the "deeply embedded . . . tradition-bound" connection between geographical units and political representation. If Guinier's argument is correct, and if it is intended to be taken seriously, then the only thing keeping the states alive as legitimate political units is the fact that they are recognized by the Constitution.

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for political jurisdictions tied to specific chunks of territory.[28] Thus it is not surprising that Guinier falls back on the old parliamentary ideal of unending open discussion and deliberation[29] by representatives (186) as a way of forging consensus between the wide variety of interests present in a population: "the interest representation remedial ideal . . . incorporates a consensus, deliberative model of the political process" (264), which makes interest representation the "functional analogue of the institutions of checks and balances and federalism, recognizing the creative functions of disagreement and multiple perspectives for the governmental process."[30] Thus Guinier's system of semi-proportional representation is intended to do the work of federalism, without the latter's "artificial" reliance on geographical regions. The "deliberation" (186) needed "to reach a public-regarding consensus" (186) can be provided by legislators but also by "informal networks of experienced bureaucrats" (171) intent on holding the line against the "polarizing" whims of mere elected officials.

During the period of Guinier's nomination, Paul Gigot wrote a negative editorial in *The Wall Street Journal* which tried to draw parallels between Guinier and John C. Calhoun.[31] In a way the comparison is an instructive one, but not because Guinier and Calhoun are similar: they are more like distorted mirror-images of each other. Calhoun, like Guinier, proposed a scheme of interest representation as a remedy for majority tyranny, but Calhoun was worried about the possibilities of such tyranny arising at the *national* level. Therefore he proposed giving every "significant interest" in the nation the power to veto national legislation. For Calhoun, this interest veto was something that was to exist alongside numerical democratic mechanisms to serve as a massive check on their power.

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28. See Carl Schmitt, *The Concept of the Political* , tr. by George Schwab (New Brunswick: Rutgers University Press, 1976), pp. 53-8, 69-76. Schmitt, however, is not alone in his recognition that the universal character of liberalism leaves it unable to account for the particular obligations citizens have to their own particular polity. See James Fishkin, *The Dialogue of Justice* (New Haven: Yale University Press, 1992), pp. 42-4. Contemporary liberals, Guinier among them, must either opt for an unreasoned (and by their lights, unreasonable) acceptance of the legitimacy of traditional nation-states and their boundaries, or they must reject the concept of sovereignty (national or otherwise) and endorse some kind of mawkish internationalism. The first course is taken by John Rawls in his *Political Liberalism* (New York: Columbia University Press, 1993), pp. 10-5; the second by Bruce Ackerman in his "Political Liberalisms," in *The Journal of Philosophy* 91 (July, 1994), pp. 378-85.

29. See Carl Schmitt, *The Crisis of Parliamentary Democracy*, tr. E. Kennedy (Cambridge: The MIT Press, 1985), pp. 48-50.

30. This passage is from Cass Sunstein, "Preferences and Politics," in *Philosophy and Public Affairs*, 20 (Spring, 1991). Guinier cites it approvingly (257). For a discussion of Sunstein and "bureaucratic deliberation," see "Note: Civic Republican Administrative Theory: Bureaucrats as Deliberative Democrats," *op. cit.*

31. Paul Gigot, "Hillary's Choice on Civil Rights: Back to the Future," *The Wall Street Journal* (May 7, 1993), p. A14.

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But in local contexts, Calhoun was a proponent of majority rule.[32] The difference could not be more striking: Calhoun made use of "interest representation" as a way of insuring that the national government would not dominate states and localities; Guinier's interest representation scheme is precisely a scheme to effect such domination. So it is with any scheme of multicultural representation which depends on the federal civil rights bureaucracy to insure "consensus" and "diversity." Piccone has argued that any attempt at creating (or returning to) a truly decentralized federal arrangement will depend on "cultural specificity" being "defined entirely in territorial terms."[33] Unintentionally, Guinier provides ample evidence for this claim. *The Tyranny of the Majority* reveals the remarkable degree to which the rejection of the geographical basis of political representation is necessarily tantamount — at least in the present US context — to an endorsement of a wild and sweeping bureaucratic nationalism.

Chad McCracken

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32. See John C. Calhoun, *A Disquisition on Government* (New York: Macmillan, 1953), pp. 19-27, 31-4. That Calhoun is none too clear about how "significant interests" are to be identified is not pertinent here.

33. See Paul Piccone, "The Crisis of Liberalism and the Emergence of Federal Populism," *op. cit.*, pp. 35-38.

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